UNFAIR FOREIGN COMPETITION ACT OF 1982

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

SECOND SESSION

ON

S. 2167

A BILL TO AMEND THE UNFAIR COMPETITION ACT OF 1979 AND CLAYTON ACT TO PROVIDE FOR FURTHER RELIEF IN THE EVENT OF UNFAIR FOREIGN COMPETITION

AND

S. 2517

A BILL TO REVISE THE FIRST SECTION OF THE CLAYTON ACT TO EXPAND THE SCOPE OF THE ANTITRUST LAWS, AND FOR OTHER PURPOSES

MAY 24 AND JUNE 24, 1982

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UNFAIR FOREIGN COMPETITION ACT OF 1982

MONDAY, MAY 24, 1982

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 10:35 a.m., in room 6226, Dirksen Senate Office Building, Hon. Arlen Specter (acting chairman of the committee) presiding.

Also present: Senators Mathias, Denton, Metzenbaum, and Heflin.

Staff present: Ralph Oman, Steve Cannon, Arthur Briskman, and Bill Loughrey, counsels; Charles Borden, Deborah Shupe, Karl Moor, and Mark Elis, professional staff members; and Linda Colancecco, chief clerk.

OPENING STATEMENT OF SENATOR ARLEN SPECTER

Senator SPECTER. We will begin these hearings on Senate bill 2167 and Senate bill 2517, proposals which are designed to assist on the problems of dumping in the United States, occurring when foreign producers are selling below the cost of production.

This problem—as it relates to the steel industry—has been particularly acute. There is another in a series of media reports on the steel industry in this morning's New York Times on the front page of section D, the caption: "Steel Industry's Dim Outlook." It again portrays the decline of the steel industry, noting that nearly 30 percent of the Nation's 450,000 steel workers have been laid off and that the plight of the steel industry is very serious. Many of us believe that this has been occasioned by the dumping of European and Japanese steel. While there remains a prevalent view in this country in favor of free trade, that view implies fair trade. Free trade would limit the ability of another government to subsidize imports to the United States. Many of us believe that the steel industry in this country is in a position to compete successfully with foreign competitors if there is no subsidization.

Last week's events in the United States Steel plant in Alabama are yet another sign of the deterioration of the American steel industry. This legislation would be a very helpful step toward placing the American steel industry on a fair competitive footing with foreign competitors.

[A copy of bills S. 2167 and S. 2517 follows:]

II

97TH CONGRESS
2D SESSION

S. 2167

To amend the Unfair Competition Act of 1979 and Clayton Act to provide for further relief in the event of unfair foreign competition.

IN THE SENATE OF THE UNITED STATES

MARCH 4 (legislative day, FEBRUARY 22), 1982

Mr. SPECTER introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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A BILL

To amend the Unfair Competition Act of 1979 and Clayton Act to provide for further relief in the event of unfair foreign competition.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Unfair Foreign Competition Act of 1982".

SEC. 2. Section 1 of the Clayton Act (15 U.S.C. 12) is amended by inserting after the words "nineteen hundred and thirteen;" the words "section 801 of the Act of September 8, 1916, entitled 'An Act to raise revenue, and for other purposes' (39 Stat. 798; 15 U.S.C. 72);".

SEC. 3. Section 801 of the Act of September 8, 1916, entitled "An Act to raise revenue, and for other purposes" (15 U.S.C. 72) is amended to read as follows:

"(a) It shall be unlawful for any person to import, assist in importing, or sell, or cause another to import, assist in importing, or sell within the United States any article manufactured in a foreign country at a purchase price less than the foreign market value (or, in the absence of any such value, the constructed value) prevailing at the time, if the reasonably forseeable effect of such importation or sale of such article is—

"(1) material injury to industry or labor engaged in commerce in the United States; and,

"(2) the prevention, in whole or in part, of the establishment, modernization or expansion of industry in the United States.

"(b) Any person who knowingly violates or combines or conspires with any other person to violate this section is guilty of a misdemeanor, and, upon conviction thereof, shall be liable to imprisonment for a term not to exceed one year, or a fine not to exceed $1,000,000, or both.

"(c)(1) Any person who has been injured in his business or property by reason of any violation of, or conspiracy to violate this section, may sue in the district court of the United States for the district in which the defendant resides,

transacts business, is found or has an agent, without respect to the amount in controversy.

"(2) In the case of any suit filed under paragraph (1), the court shall have jurisdiction to decide such suit and may issue a temporary or permanent injunction or a temporary restraining order prohibiting the importation or sale of any articles which have been or will be imported or sold in violation of subsection (a) of this section.

"(3) Any plaintiff prevailing in a suit filed under paragraph (1) of this subsection shall, upon a finding of injury under subsection (a), recover threefold the damages sustained, any other equitable relief as may be appropriate, and the cost of the suit, including reasonable attorney fees.

"(d) The standard of proof in any action filed under subsection (c) is a preponderance of the evidence. Upon a prima facie showing that there has been a violation of subsection (a) or upon any preliminary or final determination by the International Trade Commission or administering authority that is affirmative under sections 703, 705, 733, or 735 of the Tariff Act of 1930 (19 U.S.C. 1671b, 1671d, 1673b and 1673d) and which shall be considered a prima facie case for purposes of this section, the burden of rebutting the prima facie case thus made by showing justification shall be upon the person charged with a violation of this section, and unless justification shall be affirmatively shown that such articles have not

been imported or sold at less than foreign market value, the court may issue an appropriate order including any penalty or sanction authorized by subsection (c).

"(e) If, during the course of any proceeding under this section, the court determines that there is reason to believe that there is a violation of this section, it may direct that the articles concerned be excluded from entry or sale in the United States, pending completion of the suit.

"(f) Whenever it shall appear to the court before which any proceeding under this Act may be pending that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not, and subpenas to that end may be served and enforced in any judicial district of the United States.

"(g) If a defendant, in any proceeding brought under subsection (c) of this section in any court of the United States, fails to comply with any discovery order, or other order or decree of such court, the court may enjoin the further importation into the United States, sale, or distribution in interstate commerce within the United States, by such defendant of articles which are the same as, or similar to, those articles which are alleged in such proceeding to have been sold or imported in violation of the provisions of subsection (a) of this section, until such time as the defendant complies

with such order or decree, or may take any other action authorized by law, including entering judgment for the plaintiff.

"(h) The confidential or privileged status accorded to any documents, comments or information by law shall be preserved in any action under this section. Notwithstanding the preceding sentence, the court may examine, in camera, the confidential or privileged material, may accept depositions, documents or affidavits under seal, and may disclose such material under such terms and conditions as it may order.

"(i) Any suit filed under subsection (c) shall be advanced on the docket and expedited in every way possible.

"(j) For the purpose of construing the term 'foreign market value', the court shall apply the definition of such term contained in the Antidumping Act of 1921 (19 U.S.C. 160–173) and the Tariff Act of 1930 (19 U.S.C. 1671 et. seq.). To the extent that any governmental or other subsidy provided to a manufacturer or producer is not included in the foreign market value or constructed value, then the amount of such subsidy shall be added on to the foreign market value or constructed value.

"(k) The acceptance by any foreign manufacturer or exporter of any right or privilege conferred upon him to sell his products or have his products sold by another party in the United States shall be deemed equivalent to an appointment by the foreign manufacturer or exporter of the Commissioner

of Customs to be the true and lawful attorney upon whom may be served all lawful process in any action or proceeding relating to the foreign manufacturer or exporter under this section.

"(l) The action brought under subsection (c) shall be barred unless commenced within four years after the cause of action accrued.".

SEC. 4. It is the sense of the Congress that the provisions of this Act are consistent with and in accord with the General Agreement on Tariffs and Trade (GATT).

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II

97TH CONGRESS
2D SESSION

S. 2517

To revise the first section of the Clayton Act to expand the scope of the antitrust laws, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 11, 1982

Mr. MATHIAS (for himself and Mr. HEFLIN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

A BILL

To revise the first section of the Clayton Act to expand the scope of the antitrust laws, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Unfair Foreign Competition Act of 1982".

SEC. 2. The first paragraph of the first section of the Clayton Act (15 U.S.C. 12) is amended by inserting "section 801 of the Act of September 8, 1916, entitled 'An Act to increase the revenue, and for other purposes' (15 U.S.C. 72);" after "nineteen hundred and thirteen;".

SEC. 3. Section 801 of the Act of September 8, 1916, entitled "An Act to increase the revenue, and for other purposes" (15 U.S.C. 72) is amended—

(1) by striking out the first sentence and inserting in lieu thereof the following:

"(a) It is unlawful for any person importing or assisting in importing any articles from any foreign country into the United States knowingly and purposely to import such articles into the United States or to sell or cause such articles to be imported or sold within the United States, at a price substantially less than (1) the actual market value or wholesale price of such articles, at the time of their importation into the United States, in the principal markets of the country of their production or of other foreign countries to which they are commonly exported, after adding to such market value or wholesale price, freight, duty, and other charges and expenses necessarily incident to the importation and sale thereof in the United States; or (2) where no home or third country market exists, the constructed value of such articles as determined by the standards set forth in section 773(e) of the Trade Agreements Act of 1979 (19 U.S.C. 1677b(e)), if—

"(A) the sale of such articles at such price would (i) cause material injury to an industry or labor in any line of commerce in any section of the United States, (ii) prevent, in whole or in part, the establishment of

an industry in the United States, or (iii) restrain or monopolize any part of trade and commerce in such articles in the United States; and

"(B) such injury, prevention, restraint, or monopoly results therefrom.";

(2) by inserting the subsection designation "(b)" before the second paragraph of such section, and by striking out "$5,000" and inserting in lieu thereof "$50,000";

(3) by inserting the subsection designation "(c)" before the third paragraph of such section;

(4) by inserting before the last paragraph of such section the following:

"(d) Whenever it appears to the court before which any proceeding under this Act is pending that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not, and subpenas to that end may be served in any district by the marshal thereof.

"(e) If a defendant in any proceeding brought under subsection (c) of this section in any court of the United States fails to comply with any discovery order, or other order or decree, of such court, the court shall have power to enjoin the further importation into the United States, or distribution

in interstate commerce within the United States, by such defendant of articles which are the same as, or similar to, those articles which are alleged in such proceeding to have been sold or imported in violation of the provisions of subsection (a) of this section, until such time as the defendant complies with such order or decree."; and

(5) by inserting the subsection designation "(f)" before the last paragraph of such section.

○

Senator SPECTER. Without any additional introduction, I would be pleased to call on my distinguished colleague, Senator Heflin, for any opening remarks which he cares to make.

STATEMENT OF SENATOR HOWELL HEFLIN

Senator HEFLIN. Mr. Chairman, foreign subsidized imports are causing severe dislocations in the economic system of this country. I am pleased to have this opportunity to address this problem and participate with my colleagues on the Senate Judiciary Committee as well as these outstanding witnesses that will appear today in seeking new solutions. Mr. Chairman, I am particularly grateful for the legislative guidance which you have provided in preparing bills to address these problems.

These hearings come none too soon. Just 3 days ago, one of the largest steel manufacturers in my home State of Alabama announced plans to shut down one of its primary plants. This occurred in Alabama's largest city, Birmingham, which already suffers from an unemployment rate of 13 percent. But such figures are not uncommon. Another industrialized area from which we will have a witness today which has a large steel manufacturing plant has an unemployment rate of over 30 percent.

Quite simply, manufacturers of steel, rubber, and other goods and material are being devastated by a cruel combination of extraordinarily high interest rates and excessively subsidized foreign imports. These industries cry out for our immediate attention. They are being severely damaged by unfair trade competition. Free competition is essential, but so is fair competition. We cannot permit foreign governments to subsidize their own industries and dump foreign goods into this country at prices below the sales price in the home manufacturing country.

These practices are unlawful and, if allowed to continue, will undermine the whole structure of our economy. Unlawful though they are, these practices of dumping continue because present laws provide no mechanism for vigorous and effective enforcement. The harsh result is that, while American industry founders, foreign imports in almost every category are on the rise.

Mr. Chairman, I believe it is crucial that we act at this time if we are to have any chance of saving the American steel industry. I look forward to receiving the testimony of the outstanding witnesses testifying today and working with my distinguished colleagues on this committee in developing new laws to deal adequately with this problem.

Senator SPECTER. Thank you very much, Senator Heflin.

Without objection, we will insert at this point some opening remarks from Chairman Strom Thurmond and Senator Mathias.

[Prepared statements follow:]

OPENING STATEMENT BY SENATOR STROM THURMOND

Today, the Committee opens hearings on S. 2167 and S. 2517, legislation which addresses the problem of dumping faced by American business today. While our country has continually sought to facilitate international trade, we must make sure that the competition which results is fair to all concerned.

The legislation we discuss today would address the problem of dumping by amending the antitrust laws to include dumping within the definition ot activity prohibited by those laws. Without question, dumping is an anti-competitive practice with

potentially serious consequences. American business must be able to challenge dumping when it occurs, and to collect damages for any resulting injury.

In this regard, I hope that some of our witnesses appearing today will address what effect the Revenue Act of 1916 has had on the problem of dumping. It is my understanding that over the past 66 years, the Revenue Act has never been successfully utilized to collect damages for a dumping violation.

I look forward to hearing testimony from so many distinguished witnesses.

OPENING STATEMENT OF SENATOR CHARLES MCC. MATHIAS, JR.

We have spent a great deal of time in the past few years trying to increase our exports and improve our trade balance. Our poor export performance has contributed to our current economic distress. Through negotiating efforts, including the multilateral trade negotiations, the United States has reduced many of the barriers to international trade. In return, our trading partners have adopted similar reductions. This is a good trend. It promotes production. It creates jobs. It encourages efficient allocation of resources on a worldwide scale. And it ought to help reduce our trade deficit. As long as all of our competitors play by the rules, I think that American workers can more than hold their own—to the benefit of the workers, businesses, and consumers alike.

However, with this relaxation of restrictions on imports, we must insure that no one takes advantage of what may appear to be our vulnerability. I think it is commonly recognized that competition has not always been fair competition, that goods are often sold in the United States at below fair market value. We call that practice dumping, and it causes massive dislocations in domestic industries.

I believe we need a clear, coherent and enforceable policy toward dumping. Business needs to know what conduct the law forbids, and it should be able to collect damages swiftly when the laws are violated.

One of the bulwarks against this predatory behavior from abroad should be the Revenue Act of 1916. However, this law requires proof of intent to injure domestic markets by importers of dumped goods before any damages can be collected by the injured U.S. party. Intent to injure is such a difficult test that this law has never been successfully used in the 66 years it has been on the books. As a result, no American company or union has ever collected damages.

The two bills we will discuss today—S. 2167 and S. 2517—will correct this flaw. They will amend the antitrust laws to include dumping within the definition of behavior prohibited by those laws. They would also eliminate the need to show intent to injure, as the 1916 law requires. Dumping is one of the worst anticompetitive acts, and we should give both the Antitrust Division and the injured American companies and unions the right to sue for treble damages under the antitrust laws. By including it in the company of our antitrust laws, which are the basic tenets of our free enterprise economy, we give public notice of the repugnance with which we view predatory dumping.

I want to thank all our distinguished witnesses for being here today. They include experts in the antidumping laws as well as representatives of U.S. industries that have been the victims of this form of unfair competition. The Committee appreciates your contribution to our efforts to assess the problem, and we look forward to your testimony.

The record will be left open for two weeks for any additional submissions, and we request that you limit your oral remarks to five minutes to allow time for questions.

Senator SPECTER. We will now turn to our first panel—representatives from the steel industry. We have with us Laird Patterson from Bethlehem Steel; Dominic King from United States Steel; and John Sheehan from the United Steelworkers. Let us begin, if we may, with you, Mr. Patterson. We would appreciate it if you would give us a brief biographical résumé at the start—something of your own background before beginning your testimony.

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STATEMENTS OF LAIRD PATTERSON, GENERAL ATTORNEY, BETHLEHEM STEEL CORP.; DOMINIC KING, ASSISTANT GENERAL COUNSEL, UNITED STATES STEEL CORP.; AND JOHN J. SHEEHAN, LEGISLATIVE DIRECTOR, UNITED STEELWORKERS OF AMERICA

Mr. PATTERSON. Thank you, Mr. Chairman. My name is Laird Patterson. I am a general attorney with Bethlehem Steel Corp.

I am a graduate of Duke University and the University of Pennsylvania Law School. For the past approximately 5 years I have been concentrating the great bulk of my practice on dealing with the international trade problems facing the steel industry. I am a participant in the AISI International Trade Committee and am a member of the NAM International Trade Committee, and the ABA Corporate Law Section Subcommittee on Import Trade.

I had the privilege of testifying before the Antitrust Subcommittee in 1979 in support of S. 938, which is the predecessor to S. 2517. I commented at that time, and I believe all the more strongly today, that responsible efforts to correct the widely perceived shortcomings in the Revenue Act of 1916 are essential to broaden the remedies for and deterrents to what has become an epidemic of large-scale continuous dumping by many of our trading partners.

It is not my intent today to dwell on the well-known havoc that unfairly traded steel has wreaked on the domestic steel industry. The record is all too clear on that point.

Nor is it my intention to compare the two bills before this committee. Both bills represent, in my view, thoughtful and responsible efforts to address a problem that clearly merits the attention of this committee and the Congress.

DUMPING LAWS OPERATE ONLY PROSPECTIVELY

The glaring weakness in the antidumping remedies under the 1921 act, as carried forward into the 1979 Trade Agreements Act, is that they operate only prospectively and, indeed, prospectively with some significant lag from the time that a domestic industry is injured by dumped imports. This fact combined with a myriad of opportunities to reduce or eliminate the resulting dumping margins and duties in the administrative process, provides a very limited disincentive to engage in dumping practices. This is particularly true in a cyclical industry like steel, where dumping may provide immediate and desperately needed benefits in slack periods while the potential future penalties are expected to be more palatable in presumably better times on the upside of the cycle.

One need only look at the steel trade figures over the last 5 years to recognize what an ineffective deterrent the presently available dumping remedies have been. Today the continuing high levels of imports, much of it subsidized or dumped, threaten to delay or cancel vital capital investments needed to preserve the economic viability of significant portions of the domestic steel industry.

Senator SPECTER. Mr. Patterson, when you assert that there is dumping, what in your judgment is the quality of the evidence to establish that dumping exists?

Mr. PATTERSON. In the case of Bethlehem Steel Corp., in the case of the Europeans in particular, we have documented substantial dumping margins from virtually every country in Europe.

Senator SPECTER. By dumping, do you mean sales below the cost of production?

Mr. PATTERSON. Sales below the cost of production and in some cases sales below home market prices. But the case against Europe is essentially a cost-of-production case.

Senator SPECTER. How difficult is it with respect to time allocation to establish that kind of a case in a court?

Mr. PATTERSON. In terms of effort on the part of the domestic industry?

Senator SPECTER. How long would it take to present the evidence? If you were to seek an injunction, assuming that S. 2167 were to be enacted, the bill which I have proposed which would give Bethlehem access to the Federal courts to seek an injunction, and you went in for injunctive relief and you had to put a case on, how long would it take you to do that?

Mr. PATTERSON. Depending on what kind of a program you had in place, anywhere from 1 month to 3 months, I would think. If you are starting from scratch, putting together a dumping case, the market research involved is a long, expensive and involved process.

Senator SPECTER. It would take that long to put the case together, but how long would it take it to present the essential elements to a Federal judge?

Mr. PATTERSON. It could be done in the course of a day's hearing.

Senator SPECTER. Thank you. And how long do you think it would take in total from beginning to end, after the plaintiff's case were put on, including the defense, rebuttal, and surrebuttal? Could it be done in the course of a week?

Mr. PATTERSON. I would think so, with the appropriate efforts.

Senator SPECTER. Thank you.

EXAMPLES OF POTENTIAL USES OF PROPOSED AMENDMENTS

Mr. PATTERSON. The 1916 act may not be useful in every case. The prospective remedies under the 1921 act may well be more appropriate in the situation where specific traceability of damages is genuinely impractical. However, there are a host of situations where damages are readily traceable and where prospective relief is manifestly inadequate. An excellent example is the current case involving clad plate. There the dumping practices of a single Japanese manufacturer have been preliminarily found to have caused injury to a domestic industry consisting of only three or four companies. Since, to my understanding, this product is generally bid to specific jobs, it would be relatively easy to quantify the damages resulting from the dumping practice.

Is there any reason in such a situation that the domestic producer should be deprived of any compensation for such clear and identifiable damages? Of course not.

A second steel-related example is large-diameter pipe. This is a product manufactured by a limited number of domestic producers and again generally sold on a bid or negotiated basis for each major job. These jobs can be massive. The northern border pipeline

order, awarded in 1980, involved 581,000 tons of steel. When a domestic company or industry loses a major pipeline job to a foreign competitor at a dumped price, there is no way in the world that prospective relief under the 1921 Dumping Act can compensate for the damages done in terms of lost jobs and revenues.

SPECIFIC INTENT PROBLEM

The proposals to amend the Revenue Act of 1916 which are before you today would eliminate the principal obstacles to the use of the remedy in the present law and, in my judgment, make it a viable alternative for addressing injury from dumping. Of foremost importance is the fact that both bills would amend the present requirement for proving specific intent to injure. This requirement has been widely cited as the major reason why the 1916 act has been used so infrequently. It is clearly an unnecessary and unfair burden of proof.

A dumper's intent is normally to push his product out the factory door at whatever price will enable him to maintain his work force. In the case of steel, where Government ownership or involvement is the norm in most countries outside of the United States, the maintenance of local employment is the principal objective of the enterprise. The profit motive is secondary or nonexistent. The importers know full well that dumping distorts trade and leads to most jobs and revenues for domestic competitors. That may not be their specific objective, but it is surely the normal and foreseeable effect. If an importer or foreign manufacturer knows that he is dumping, he must be presumed to recognize the consequences of his act.

INJUNCTIVE RELIEF

I also strongly endorse the provision common to both bills permitting injunctive relief where defendants refuse to cooperate in the discovery process. This may be strong medicine, but it is essential if we are to put real teeth into the 1916 act.

Those who willfully violate the dumping laws cannot be permitted to hide behind their borders when it is time to face the consequences of their acts.

In summary, Mr. Chairman, the proposals before you today would provide a real and meaningful disincentive for foreign manufacturers and their agents to engage in trade-distorting tactics. It would fill a very wide gap in our trade remedies. I urge this committee and your colleagues in the Congress to vigorously pursue this vital initiative.

Thank you for the opportunity to present these views.

Senator SPECTER. Thank you very much, Mr. Patterson. I appreciate your testimony.

We will now turn to Mr. Dominic King, representing the United States Steel Corp.

Mr. KING. Thank you, Senator. I am Dominic King, assistant general counsel at United States Steel Corp.

I am a graduate of the University of Montana and the University of Montana Law School. I obtained my doctorate at the University of Michigan. For the past 15 years I have been counsel at United

States Steel responsible for the trial of the cases involving both antidumping and countervailing duty.

I have a prepared statement. Instead of reading from that, I would like to give you some of my reactions over the last 15 years of trying to litigate in this area, as viewed from the aspect of a trial lawyer trying to present one of these cases. The deficiencies as Mr. Patterson has pointed out are so apparent in both the antidumping and countervailing duty law that they are prospective in scope of relief after you get there. I think that my colleague is optimistic in thinking that you can prepare a case in 2 to 3 months. I believe that European cases that were filed by six of the steel companies took more like a year to obtain the necessary evidentiary material that was required.

After it is then filed, you—June 10 is the first date after we filed on January 11 that any relief at all would be available to us if we are successful in every respect for goods coming in on and after June 11.

It is painfully aware that the antidumping statute of 1921 was not designed and has never been designed to really rectify the damage that has already been incurred by an industry or by a particular company. I think that the bills that both you and Senator Mathias and Senator Heflin have introduced, although somewhat different in the approach, basically address this problem and are an effort to correct it. You deal with the problem of allowing recovery of actual damages. This leaves the option to a company of whether or not it will proceed under the 1921 act for prospective relief or whether it will seek to rectify the individual damage that it has sustained.

I think that in permitting treble damages, recovery of attorney's fees, and the ability of a district court to exclude the imports pending the adjudication if there is a prima facie showing, as well as the equitable power at the conclusion of the presentation of the testimony to the district court, to both afford remedies by way of money damages as well as equitable relief in the form of injunction, present for the first time the opportunity of perhaps correcting the dumping that is taking place by the importers. It also permits ease of access by the venue. Both of the statutes permit the venue to lie in any district court where a defendant may be found, where he does business. I think that the ease of access on the service of process where he constitutes the Commissioner of Customs as his agent for service of process, the fact that it deals not only with the foreign manufacturer but also with the exporter and those who sell in this country permit additional remedies against specific people that the Antidumping Act of 1921 totally misses.

In the district court, there is one other fact that I would like to emphasize, Senator, if I may. That is that under the 1921 act in the last 15 years at least that I have been involved in it, the regulations that are required for you to present even a basic case that will be accepted has become more onerous each year. It now requires a formidable task, I mean a really formidable task where you almost try the case before you actually even file the pleadings.

This bill would permit the opportunity of proceeding under the Federal Rules of Procedure where notice pleading and the fact that you would be able to get your case in before the judge. I think in 3

or 4 days on a big case like the one we have with the Europeans that the domestic industry could put in its side of the case. It might take as much as 10 days of trial before the judge would feel that he was in a position to resort to perhaps as drastic a remedy as permitting a temporary restraining order or a preliminary injunction to issue. But I think that the 2 weeks would be well spent at the outset to determine whether or not it was appropriate, perhaps even with the posting of adequate bonds by the litigant involved, that there be a preclusion order of those goods that are coming into the country so that, in the course of the discovery of the case, it would serve, I think, two worthwhile functions. As you know, getting into discovery in treble damage cases can begin to get you bogged down in the discovery process that can go on for years.

If the judge puts this kind of a preclusion order in, I think there is then an incentive on all parties concerned to do away with the discovery simply for the discovery sake or simply in order to keep lawyers gainfully occupied and seek to get to the end point of a resolution.

For all of these reasons, I think that both of the bills hold great promise in having filled a void which has existed ever since the 1921 Antidumping Act. The only thing that I would like to see something comparable to it done is in the area of the countervailing duty, where you are dealing with subsidies. I think when you talk about antidumping and subsidies, you are talking about two sides of the coin. Usually, the dumping is permitted, at least from the steel industry's experience, because of the subsidies. I think it is almost a cause and effect. That is the one area where I would like to see something addressed as well.

Thank you very much for the opportunity of addressing you.

Senator SPECTER. Thank you very much, Mr. King; I appreciate your testimony.

Without objection, your entire prepared statement will be inserted.

[The prepared statement follows:]

STATEMENT OF

DOMINIC B. KING
ASSISTANT GENERAL COUNSEL

UNITED STATES STEEL CORPORATION

I AM DOMINIC B. KING, ASSISTANT GENERAL COUNSEL OF THE UNITED STATES STEEL CORPORATION. I HAVE BEEN RESPONSIBLE FOR COUNSELING THE CORPORATION ON INTERNATIONAL TRADE PROBLEMS FOR 15 YEARS. I SINCERELY APPRECIATE THIS OPPORTUNITY TO TESTIFY BEFORE YOU ON LEGISLATION AMENDING THE 1916 ANTIDUMPING ACT TO PROVIDE A VIABLE DAMAGE REMEDY AND EQUITABLE RELIEF FOR THOSE INJURED BY DUMPING OR SALES AT LESS THAN FAIR VALUE. THIS LEGISLATION REPAIRS A SERIOUS DEFICIENCY IN OUR DEFENSES AGAINST UNFAIRLY TRADED IMPORTS CAUSED BY THE INADEQUACY OF EXISTING DAMAGE REMEDIES, AND THE PROSPECTIVE NATURE OF RELIEF UNDER OUR ANTIDUMPING LAWS.

THE AMERICAN STEEL INDUSTRY HAS BEEN RAVAGED FOR NEARLY 20 YEARS BY THE UNFAIR TRADE PRACTICES UTILIZED BY FOREIGN STEELMAKERS IN OUR MARKETS. A SENATE FINANCE COMMITTEE REPORT IN 1967 DISCUSSED THE SERIOUS INJURY CAUSED

THE DOMESTIC INDUSTRY BY DUMPED AND SUBSIDIZED IMPORTS AND NOTED THE RELATIONSHIP OF SUBSIDIZATION TO DUMPING. FIFTEEN YEARS LATER THE SAME PROBLEMS EXIST, EXACERBATED BY THE EFFECTS OF YEARS OF SPIRALING SUBSIDIZATION AND SALES AT LESS THAN FAIR VALUE. THE STEEL INDUSTRY HAS REPEATEDLY APPEALED TO THE GOVERNMENT FOR THE ENFORCEMENT OF THE TRADE LAWS. REPEATED STATEMENTS BY GOVERNMENT OFFICIALS AND THE INSTITUTION OF THE TRIGGER PRICE SYSTEM ACKNOWLEDGED THE STEEL INDUSTRY'S CLAIMS.

THE IMPACT OF THESE PRACTICES ON THE DOMESTIC INDUSTRY HAS BEEN DEVASTATING. BETWEEN 1977 AND 1982 DOMESTIC STEELMAKING CAPACITY DROPPED BY SOME 10 MILLION TONS. EMPLOYMENT IN THE STEEL INDUSTRY HAS DROPPED FROM 512,395 IN 1974 TO 313,000 IN FEBRUARY OF 1982, THE LOWEST FIGURE SINCE AISI STARTED COMPILING MONTHLY EMPLOYMENT DATA IN 1933.

IN JANUARY, U. S. STEEL FILED PETITIONS AGAINST 11 COUNTRIES ON FIVE MAJOR PRODUCTS UNDER OUR COUNTERVAILING DUTY AND ANTIDUMPING STATUTES. OTHER STEEL COMPANIES FILED PETITIONS ON THESE AND OTHER PRODUCTS. EARLIER THIS MONTH U. S. STEEL FILED PETITIONS ON WELDED PIPE FROM ITALY, FRANCE, WEST GERMANY AND BRAZIL AND ON WELDED PIPE,

PLATE AND SHEET FROM SOUTH KOREA. THE SPECIALTY STEEL INDUSTRY HAS FILED COMPLAINTS UNDER SECTION 301 OF THE TRADE ACT OF 1974 AND UNDER THE ANTIDUMPING STATUTE. THE OUTCOME OF THESE CASES IS STILL UNKNOWN. IT IS HOPED THAT THE ADMINISTRATION WILL BE ABLE TO DEAL FORCEFULLY WITH THE UNFAIR TRADE PRACTICES EMPLOYED BY MANY FOREIGN PRODUCERS AS DEMONSTRATED BY OUR PETITIONS. HOWEVER, THE RELIEF PROVIDED BY THE ANTIDUMPING AND COUNTERVAILING DUTY STATUTES IS PROSPECTIVE ONLY; PAST INJURY CAUSED BY THESE TRADE PRACTICES IS LEFT UNREMEDIED. THE PETITIONS FILED BY U. S. STEEL DEMONSTRATE THAT THESE PRACTICES BEGAN LONG BEFORE THE PETITIONS WERE FILED. THE PETITIONS ALLEGE THE SALE OF MANY OF THE PRODUCTS COVERED BY THE PETITIONS AT UNFAIR PRICES FOR THE LAST SIX CONSECUTIVE YEARS. AND THE COUNTERVAILING DUTY PETITIONS ALLEGE IN SOME CASES A PATTERN OF SUBSIDIZATION GOING BACK TO THE MID-1960s.

THE ANTIDUMPING AND COUNTERVAILING DUTY STATUTES PROVIDE RELIEF BY ASSESSING DUTIES EQUAL TO THE MARGIN OF DUMPING OR SUBSIDIZATION; THE RELIEF IS NOT INTENDED TO MAKE A PARTY WHOLE FOR PAST LOSSES. FURTHERMORE RELIEF UNDER THE ANTIDUMPING AND COUNTERVAILING DUTY LAWS APPLIES ONLY TO GOODS ENTERING CUSTOMS AFTER THE DATE OF THE

PRELIMINARY DETERMINATION UNLESS CRITICAL CIRCUMSTANCES ARE FOUND, AND THEN RELIEF ONLY EXTENDS TO GOODS ENTERING AFTER A DATE 90 DAYS BEFORE THE DATE OF THE PRELIMINARY DETERMINATION. THIS RELIEF IS IN THE FORM OF THE SUSPENSION OF THE FINAL ASSESSMENT OF DUTIES ON PRODUCTS COVERED BY A PRELIMINARY DETERMINATION THAT DUMPING OR SUBSIDIZATION EXISTS. ONCE A FINAL AFFIRMATIVE DETERMINATION IS MADE CUSTOMS WILL COLLECT THE APPROPRIATE DUMPING OR COUNTERVAILING DUTIES FROM GOODS COVERED BY A SUSPENSION ORDER AS WELL AS GOODS ENTERING AFTER THE DATE OF THE FINAL DETERMINATION.

THE PROPOSED LEGISLATION WOULD PROVIDE RELIEF FOR DAMAGES SUFFERED FROM THE TIME INJURY IS INCURRED. THE AMENDED STATUTE WOULD SUPPLEMENT THE EXISTING ANTIDUMPING STATUTE; THE DELAY INHERENT IN INVESTIGATING THE CAUSE OF ECONOMIC DISLOCATION AND IN PREPARING PETITIONS ON EXTREMELY COMPLEX PRACTICES, COUPLED WITH LENGTHY INVESTIGATIONS, MEANS THAT MUCH INJURY IS UNREMEDIED. THESE PROBLEMS HAVE BEEN WORSENED IN THE PAST BY THE FAILURE TO ASSESS AND COLLECT DUTIES ON A TIMELY BASIS.

IT SHOULD BE NOTED THAT EXISTING LAW RECOGNIZES THE NEED FOR A DAMAGE STATUTE; THE 1916 ANTIDUMPING ACT PROVIDES A DAMAGE REMEDY; HOWEVER, BECAUSE OF THE ONEROUS

REQUIREMENT THAT THE DEFENDANT BE PROVEN TO HAVE SOLD AT UNFAIR PRICES WITH THE SPECIFIC INTENT OF CAUSING INJURY TO A DOMESTIC INDUSTRY, IT HAS NEVER BEEN SUCCESSFULLY EMPLOYED. THE SUBJECTIVE STATE OF MIND OF AN IMPORTER AS TO THE DOMESTIC INDUSTRY IS IRRELEVANT TO THE PURPOSE OF A DUMPING REMEDY. NEITHER THE EXISTING ANTIDUMPING OR COUNTERVAILING DUTY STATUTES ADMINISTERED BY COMMERCE REQUIRE SUCH PROOF.

BOTH SENATOR SPECTER'S BILL, S. 2167, AND S. 2517, INTRODUCED BY SENATORS MATHIAS AND HEFLIN, WOULD ELIMINATE THIS REQUIREMENT AND THUS TURN THE 1916 ANTIDUMPING ACT INTO A USEFUL DAMAGE REMEDY. THE BILLS WOULD CONTINUE CRIMINAL PENALTIES FOR THOSE WHO KNOWINGLY ENGAGE IN DUMPING. BOTH BILLS WOULD GIVE THE COURTS THE POWER TO GRANT INJUNCTIVE RELIEF TO THOSE DOMESTIC CONCERNS INJURED BY SALES AT LESS THAN FAIR VALUE.

THE BILLS DIFFER IN SOME DETAILS. FOR EXAMPLE, THE BILLS DEFINE THE DUMPING NEEDED TO TRIGGER LIABILITY SOMEWHAT DIFFERENTLY. THE MATHIAS-HEFLIN BILL REQUIRES A FINDING THAT SALES WERE AT A PRICE "SUBSTANTIALLY LESS THAN (1) THE ACTUAL MARKET VALUE OR WHOLESALE PRICE OF SUCH ARTICLES AT THE TIME OF THEIR IMPORTATION INTO THE UNITED

STATES IN THE PRINCIPAL MARKETS OF THE COUNTRY OF THEIR PRODUCTION OR OF OTHER FOREIGN COUNTRIES TO WHICH THEY ARE COMMONLY EXPORTED AFTER ADDING TO SUCH MARKET VALUE OR WHOLESALE PRICE FREIGHT, DUTY AND OTHER CHARGES AND EXPENSES NECESSARILY INCIDENT TO THE IMPORTATION AND SALE TO THE U.S. OR (2) WHERE NO HOME OR THIRD COUNTRY MARKET EXISTS THE CONSTRUCTED VALUE OF SUCH ARTICLES AS DETERMINED BY THE STANDARDS SET FORTH IN SECTION 773(E) OF THE TRADE AGREEMENTS ACT OF 1979...". THE SPECTER BILL FOLLOWS THE FORMULATION OF THE ANTIDUMPING STATUTE ADMINISTERED BY COMMERCE WHICH CONSIDERS ANY SALES AT LESS THAN FOREIGN MARKET VALUE AS A VIOLATION OF THE STATUTE IF INJURY IS CAUSED. WE PREFER THE DEFINITION IN THE SPECTER BILL. WE BELIEVE THAT THE TERMINOLOGY OF THE MATHIAS-HEFLIN BILL INVITES THE COURTS TO RULE OUT CONSIDERATION OF SITUATIONS INVOLVING RELATIVELY SMALL MARGINS, EVEN IF INJURY IS CAUSED, ON SUBSTANTIALITY GROUNDS BEFORE THE INJURY QUESTION IS REACHED. WE BELIEVE THE SIZE OF THE MARGIN IS A QUESTION RELATED TO THE AMOUNT OF INJURY, NOT WHETHER DUMPING HAS OCCURRED.

THE SPECTER BILL SHIFTS THE BURDEN OF PROOF TO THE DEFENDANT ONCE A PRIMA FACIE CASE IS MADE. WE FEEL THIS RECOGNIZES THE PROPER BALANCE BETWEEN THE PARTIES IN

THIS SORT OF LITIGATION SINCE THE DEFENDANT IS IN A BETTER POSITION TO OBTAIN THE INFORMATION NECESSARY TO DECIDE A DUMPING CASE, GIVEN THE CONFIDENTIAL NATURE OF MUCH OF THIS MATERIAL, ESPECIALLY IF CONSTRUCTED VALUE QUESTIONS ARISE. WE SUGGEST THAT BOTH BILLS BE AMENDED TO ADOPT THE MATERIAL INJURY DEFINITION FOUND IN THE 1979 TRADE AGREEMENTS ACT IN ORDER TO ENSURE THAT ALL INJURY OTHER THAN DE MINIMIS INJURY WOULD BE COVERED. BOTH BILLS RECOGNIZE THE SERIOUS THREAT OF UNFAIR TRADE PRACTICES TO THE VIABILITY OF DOMESTIC INDUSTRIES AND TO THE INTERNATIONAL TRADING SYSTEM. BY STRENGTHENING EXISTING CIVIL DAMAGE REMEDIES, CRIMINAL PENALTIES, AND INSURING THE RIGHT TO SEEK INJUNCTIVE RELIEF, OUR EXISTING ANTIDUMPING LAWS WILL BE IMMEASURABLY ENHANCED.

THESE BILLS WILL IMPROVE THE ARSENAL OF WEAPONS A DOMESTIC CONCERN HAS AGAINST THOSE WHO ABUSE THE INTERNATIONALLY RECOGNIZED RULES OF FAIR TRADE.

WE THANK YOU FOR YOUR INTEREST IN THE ENFORCEMENT OF OUR FAIR TRADE LAWS. UNFAIR TRADE PRACTICES HAVE JEOPARDIZED THE FUTURE OF OUR STEEL INDUSTRY JUST AS THEY HAVE DESTROYED OTHER DOMESTIC INDUSTRIES.

Senator SPECTER. I would now like to hear from Mr. John Sheehan from the United Steelworkers of America.

Mr. SHEEHAN. Thank you, Mr. Chairman.

The introduction of S. 2167 and S. 2517 by yourself and Senators Heflin and Mathias and others could not have come at a more propitious moment. Presently major domestic steel firms, together with the United Steelworkers of America as a copetitioner, are awaiting a decision from the Department of Commerce with regard to charges of unfair competition lodged against most of our European trading partners. As a matter of fact, most steel mill products are under import pressure and subject to petitions for relief. I refer both to carbon steel and to the specialty steel items.

Steel imports have had and continue to exercise a very persuasive and pervasive influence upon steel production and on employment in at least two ways. Obviously, our union is painfully aware of the short-term impact that imports have at the time of sharp downturns in the economy such as we are now experiencing. The economic policies being pursued by the National Government, which have resulted in high deficits and high interest rates, have caused havoc in the steel industry. Although 100,000 steelworkers are on layoff and some plants are announcing indefinite shutdowns—Senator Heflin made some reference in his introductory remarks this morning to the plant in Alabama. The American Iron and Steel Institute announced that unemployment was around 30 percent, more than three times the national average.

While the union cannot pretend that the failure in the steel market is due to steel imports, it does recognize that the impact of the recently failing economy could be moderated if steel imports did not reach the surge levels of the last few months. I might indicate they are surge levels that seem to be reached after the petitions were filed with the Commerce Department.

There is, therefore, a short-term equation between job losses and high import penetration, especially when it occurs abruptly.

Mr. Chairman, a lost market in steel certainly means less manpower. Manpowerwise, for instance, the steel industry is a declining industry. Since 1950, we have lost over 200,000 jobs in the steel industry. During the last 2½ years, the rate has accelerated into the neighborhood of about 100,000 steelworker jobs. However, a lost sale during a downturn in the market, a sale lost to imports means a layoff. It means a face behind the lost job, whereas in the other situation you may have less job opportunities, but the lost sale you can put a Mr. So-and-so's face behind that. And that is the layoff.

Furthermore, the sharp increases in steel imports have occurred when there has been a sharp drop in steel demand. We have been experiencing not only relative increases in steel imports but absolute increases in the tonnages.

What makes the situation particularly unacceptable is the fact that substantial quantities of the steel which has been entering our market has had an unfair competitive advantage because it was either subsidized by foreign governments or dumped at prices below cost of production. With unemployment as high as it is, imports, whether dumped or not, are intolerable.

I am certain that the short-term exposure that I just talked about of steel imports cannot be denied, a solution may be avoided.

However, the long-term influence of imports has been ignored, especially in the steel industry and, maybe even worse, have been accepted. Immediate steel import crises do have the advantage of receding, and subsequently the public focus is diverted. But the problem has remained. The fact that imports attain and retain ever-larger shares of the steel market has been the most important factor in the failure of the steel industry to operate at normal levels of capacity. Productivity is adversely affected, and modernization decisions are delayed. Even worse, in some cases the decision to terminate production is made.

Currently, there is a serious concern as to whether the steel industry will substantially shrink its productive capacity. Periods of recession and high imports seem to be conducive to those decisions, but it is actually the long-term inability to be assured of a stable market that allows obsolescence to grow.

A recent article in the Wall Street Journal—and you mentioned this morning in the New York Times—indicated that steel users are, "worried that the steel industry shakeout strategy"—and I might say the union is very much concerned about, "a shakeout strategy"—will leave them with fewer suppliers, higher prices, and product shortages. They are concerned about the liquidation of domestic capacity.

These two aspects of the import problem, namely immediate impact upon jobs during a recessionary period and the long-term influence upon modernization investments during a restructuring period, indicate that for steel at least there is a need for a steel trade policy. It cannot be one which is governed merely with ascertaining whether steel imports have been unfairly traded. Surely those determinations, either under our laws or GATT or under the procedures contemplated by these bills, should be made. But focusing upon the unfair or legal aspects of trade may divert too much attention toward the finding of fault rather than evaluating the status of the domestic steel industry, especially one like steel which, from all accounts, is apparently at the threshold of momentous decisions regarding its restructuring policy.

Your bill, Mr. Chairman, is, hopefully, bringing another congressional scrutiny upon steel's threshold or, to use another term that has been used a lot, the cross road of steel. For the first time, our trade laws with respect to basic steel are being tested. Certainly the 1979 amendments evolving out of the circumstances surrounding the MTN ratification will be most critical for the final outcome in the Department of Commerce decision on dumping and subsidy charges.

If the current law fails to be responsive to the steel trade crisis, then certainly aggressive and more pronounced congressional action will be required. Our union recognizes that a national trade policy is a complex amalgam of many national interests. Normally the adverse imbalances should therefore be handled through an administrative adjudicatory process.

Complaints about the past trade laws, at least from the union's point of view, because we saw the jobs erosion, were justified. We are now awaiting the testing of the 1979 act to see whether it is sensitive enough to be able to respond to the modern-day problems of international trade. Whether you should entertain another

option, namely judicial relief, in handling ordinary trade imbalances and injury remains to be seen. Certainly, additional legislative adjustments of the administrative procedure could also be enacted if the system is still adjudged to be so inadequate as to require separate private recourse to the courts by injured parties.

Our union is not testifying either to the desirability or lack thereof of another option for determining ad hoc cases of trade injury. But let me hasten to add here and then to shut off, the fact that these bills have been introduced and the fact that there may be a private recourse to relief might very well be taken as an indicator to our trading partners to desist from the unfair type of trade that we have been subjected to. It is not only because of the relief mechanisms that are in here but I think also, Mr. Chairman, because we are in these bills experiencing the fact that there may be a penalty mechanism for those that do violate our laws and the GATT laws. Thank you.

Senator SPECTER. Thank you, Mr. Sheehan.

I am not clear as to your position concerning both 2167 and 2517. We had hearings in Pittsburgh last month. Mr. Julius Uehlein testified on behalf of the steelworkers in favor of 2167. Is that a divergence from your position?

Mr. SHEEHAN. No; it is not a divergence, but I would hazard an interpretation here. At that time he was not necessarily testifying with regard to the bill in particular but testifying to the state of the imports situation in steel. And to that extent we certainly would be seeking remedies to that. But when we were focusing particularly upon whether we should be seeking judicial relief, I do not think his testimony was directed to that point, at least as far as the international union is concerned.

Senator SPECTER. I think it was. Would you check with your appropriate officials, whoever is appropriate, and correspond with us on that subject as to whether you do favor 2167 and 2517 specifically? I understand the thrust of your testimony this morning, but I do believe that Mr. Uehlein supported 2167 in its current terms. If you would clarify that for us, we would appreciate it.

Mr. SHEEHAN. Yes.

Senator SPECTER. Mr. King, you testified that you thought it would take longer than Mr. Patterson believed to prepare a case. Do you now have access to discovery as broad as that encompassed under the Federal Rule of Civil Procedure?

Mr. KING. We do not have any access to discovery at all. That is one of the problems, Senator, that takes so long in preparation.

Senator SPECTER. So, if 2167 were enacted, for example, and there was a private right of action in the Federal courts, you would have access to the Federal Rules of Civil Procedure. That would materially reduce the time of preparation, would it not?

Mr. KING. I think that it would shorten the time of preparation, but the most important part of it would be permitting discovery with respect to issues on which either the importers or the foreign manufacturer or the seller oftentimes raises questions with regard to the differences in circumstances of sale, the noncomparability of the products, the fact that the home market sales price is different than your evidence shows. I think that the discovery process, if you brought the private action, would tend to more quickly eliminate

those differences that now exist in the administrative process. At least that is my opinion based on my experience.

Senator SPECTER. Would it expedite or shorten the time of preparation for such a case?

Mr. KING. I think so.

Senator SPECTER. And will it be substantially less expensive as well?

Mr. KING. I think so, Senator.

Senator SPECTER. You testified that you thought it would take 3 to 4 days for the plaintiff's case to be put on. You then mentioned 10 days. Is it your view that the entire case could be presented in 10 days, or will it take 10 days for the defense to present their case?

Mr. KING. I doubt it. I would like to think that that is all the longer that it would take. But I was addressing myself to the discretions that are permitted to the Federal district judge in your bill. It would permit him, upon a showing of a prima facie case, to issue an injunction pending the final adjudication of the case. That would preclude; one of the equitable powers that is given him under your bill is a preclusion order that would prevent the importations or even he could modify it or tailor it to permit imports of x amount pending the outcome, based upon what the presentation showed as to those goods that the evidence showed prima facie evidence of dumping.

So, I think your bill has addressed and given to the judge a sufficiently tailored and yet broad enough scope that he could deal with this. Our experience has been, and I think that Mr. Sheehan touched on this, that there is almost an inevitable surge after you file a dumping case under the 1921 act because there is a free bite at the apple in between the time that you file the case and the time that there is this first preliminary finding on which there is the suspension of liquidation. So, they can send dumped or subsidized goods in during that open window without you ever catching up with them and having any kind of relief. I think your bill and the bill of Senator Heflin and Senator Mathias also addresses that.

Senator SPECTER. Under existing practices under the 1921 statute, what is the average time from the filing to the decision?

Mr. KING. It varies depending upon whether or not they deem it to be a complex case, Senator. I think the crucial thing in the existing 1921 act is not how long it takes to get a final adjudication. I think that there is perhaps a common misperception. It is really the time that you file it until you actually get a preliminary finding from the Department of Commerce that preliminarily they have determined that there is in fact dumping or that there is in fact subsidy. It is at that point for the first time under the statute that they have the authority to grant you the relief on all imports that come in on and after that date.

Even if it took a year or 15 months on average—and I do not think it is that long under the new act; I would think you are really talking about 9 to 12 months, somewhere in that neighborhood. But the crucial point in the 1921 act that perhaps at some point also needs to be addressed is that it takes several months from the time you file the case before you get to this prospective relief. If there were a way that could be found that would permit

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the relief to go back to the date at least of the filing of the complaint, I think that would help.

Senator SPECTER. Currently, is the average time between the filing and the preliminay finding 9 to 12 months?

Mr. KING. No. That is for the final adjudication. The time now is taking us, in countervailing duty it is taking from January 11 until June 10. On the dumping cases, those will be August, I believe, August 9 or 10. So, we will have from January until August 9. We filed on January 11. I believe it is August 9 or August 10 that they will have to make their finding on the dumping. We will then be able to have relief on imports coming in on and after that date on the dumping.

The Department of Commerce must make a determination on the countervailing duty because it is a shorter time period under the countervail by June 10, coming up on us very shortly on the countervailing portions of the case.

Senator SPECTER. Under those procedures, assuming that there is a finding in your favor as of August 9, what happens next?

Mr. KING. At that time, if the decision is affirmative, if we win on this preliminary finding, imports that come in on and after that date, they will suspend the liquidation and require that there be a posting of a bond by the importer in the amount of what the Department of Commerce has preliminarily found to be the margin of dumping. Then, when the final decision is made, there will then be a final adjustment as to what the proper dumping rates should be. They will assess the dumping duties on all of the imports that come in on and after that August 10 date.

Senator SPECTER. What is the average time span for that final decision?

Mr. KING. The time line on the dumping, I believe, will run to January 1983 before we get a final decision by both Commerce and the ITC. I believe that on the countervail that both the injury finding and the Department of Commerce finding on finals will be in the latter part of November and December of this year.

Senator SPECTER. Procedurally, what happens after the final decision?

Mr. KING. After the final decision, if we are successful, a dumping order or a countervailing duty order will be entered. Customs will then assess duties on all of the imports that come in. But it is a very difficult process because each new entry that comes in, for example, under the antidumping, if you have an antidumping order that is entered, there is a margin of dumping based upon, say it is the difference between the home market price and they are selling lower here, each new entry that comes in is almost reassessed. The importer may come in and say: Well, we have done two things since that final order; we have either reduced the price of our home market or we have increased the price that we are selling in the United States. So, the margin that you have is a floating target. It is not a definitive amount, an absolute amount. It varies on each entry, depending upon the home market price and the price of the goods being sold in the United States. So, it is very complicated.

Once you get a dumping order or a countervailing duty order, the battle has only just begun, really. You have to then be very

careful, if you are a petitioner and you have been successful, to monitor each of the imports coming into the ports to make certain that the Department of Commerce and the Customs people are in fact correctly assessing the duties and that they are not being misled by any of the importers as to the actual situation.

Senator SPECTER. I have some few questions, but I will defer at this point to my colleague, Senator Heflin.

Senator HEFLIN. In regard to the time that would necessarily be involved under a temporary restraining order, first, and then, second, under a preliminary injunctive relief, under proposed legislation, I want to address these issues and get your thoughts on it. Are there presently price-recording agencies or bureaus in foreign countries reporting what the price of certain types of steel would be when sold in the country of production? Then, of course, we have informational services as to the price of steel in the United States, providing a comparison of the price in regard to establishing the dumping. Is this information readily available? Would this be a difficult thing to obtain?

Mr. KING. From my point of view, it is a very difficult thing to obtain. There is no published price source in the home market in the foreign country, and there is none here. So, that, Senator, is one of the problems that you have in proving your antidumping case, to obtain credible evidence as to what the normal wholesale price is in the home market, and then what is the normal wholesale price after you make all of your necessary adjustments that they sell the same comparable product here in the United States. So, there is not available to you a ready comparison basis that is published by either the Government here or the government abroad.

Perhaps Mr. Patterson can elaborate on that.

Mr. PATTERSON. I would certainly agree that it is one of the major obstacles that you face in preparing for dumping litigation. You have to go out and seek to obtain through market research in foreign countries the best available evidence to you which is then verified in the administrative process. No reliable price tracks are available that contain the detail that you need in a case like this.

Senator HEFLIN. If that is a problem, should an abrupt or even a gradual change of price in the United States in effect shift the burden of proof in regard to this in order to be able to expedite a determination? Is there some mechanism that raises valid suspicions and reasonable questions that dumping is going on, because of price variances that occur? If so, is there a method of approaching this legislatively that could shift the burden of proof that would remedy the time problem involved in proving that dumping has occurred?

Mr. PATTERSON. I think the more serious problem, Senator, is in determining a home market price in the country of export. Particularly in a Federal court litigation context, one could produce affidavits of purchasers to establish a price in the U.S. market. The major obstacle is determining valid home market data in the country of export.

Senator HEFLIN. Obviously, steel companies are making charges of dumping. What verification processes do you go through before you, in effect, charge that a dumping practice has been made?

Mr. PATTERSON. We undertake a very lengthy and costly market research project in the country of export to determine the home market prices. We establish to the satisfaction of the Commerce Department that the data we have presented is based on reliable information. That then becomes the best available information until the Commerce Department in fact goes out and verifies, based on the questionnaire responses of the manufacturers or exporters themselves, the actual home market sales prices of the charged companies.

Mr. KING. Senator, could I add to that, if I may? One of the things that we proposed about 10 or 11 years ago was that there be a requirement on the customs invoices that the importer and the exporter identify on that product what the home market price for that same comparable product at that particular time of that sale is and that it be done under the provisions of the statutes that we have on importations that would make it a crime indeed to falsify that information. If they did not have the ability to get that kind of information, they could at least give the best that was available. We also suggested that the Customs Bureau prepare a system whereby on a computer printout they themselves could monitor the prices both on home market and importation so that there would be immediately available if there was a discernible margin of dumping our own Government would have within its own documents evidence pertaining to that subject.

I would like to say, as Mr. Patterson has, that it requires and would require, I presume, in order to get a preliminary injunction under the bill, that we would need to come in with credible market research evidence as to the home market prices that exist there as well as here. We would have to have probably some kind of a certification to show the methodology in which the prices were obtained, the reliability of the information, and the fact that the sample was sufficiently broad to represent the then normal wholesale price of the products.

It is not an easy matter. We have done it over the years. As Mr. Patterson points out, it takes time, effort, and money to accomplish it.

Senator HEFLIN. It would appear to me that, if you have the information available and it is an ongoing approach, it could, in effect, deter some dumping if dumping could be readily recognized and verifying information were available. This may be an area for treaty negotiations and trade treaties in the future.

Also, the time frame seems to me to be affected by the issue of the burden of proof. Under the Specter bill and also, I believe, under the Mathias bill, you have a change in the burden of proof as to intent. That should in the final analysis make it an easier case to prove in court and therefore cut down perhaps on time.

Are there other suggestions that you might have regarding if you were to change the laws and make the antitrust laws applicable to dumping, how you might be able to establish your case more readily with either better rules of evidence or availability of figures and statistics of this sort? It seems to me, even if you change these, you still have a difficult task involved here. It appears to me that, if you are going to try to remedy this situation, you must address the

problem that, although the evidence obviously is finally obtainable, the delay involved in obtaining it is of serious consequence.

Mr. KING. I would agree with that, Senator.

Mr. SHEEHAN. Senator, could I add something here with regard to the time sequences, especially in view of the comments that have just been made. An extreme amount of manpower effort and time has gone into the development of these cases. The question is whether they should be filed with the Commerce Department or, subsequently, if this bill is passed, filed at court, there is an enormous amount of investigation that has to take place by the agency itself. Under the current trade law, the Commerce Department will now have to come in with its preliminary ruling on June 10 of this year. It is my understanding that in some of these cases they were required by law to come in by April of this year, which is a relatively short period of time. But because of the complexity of these cases, the law allowed them to slide over to June 10.

The significance is on June 10 special duties will then be applicable against steel that enters our market after that time. The issue at least that I was bringing up, and Mr. King also remarked, is that after the filing, in January, we saw an enormous amount of steel coming into our market. June 10 is the date that normally under the law the effective date of the duties will take place. At issue now, it seems to me, is whether you could make retroactive the application of those duties closer to the period of the filing of the petition.

I noted in American Metal Market the fact that Secretary Baldrige made reference to a section in the trade act called "critical circumstances," under which he may indeed decide to make the duties retroactive to sometime in March. I think that that is rather critical in the steel case because it is a first testing of the 1979 law. If we could indeed obtain that kind of a retroactive relief, it would be very significant as to whether our laws can operate.

Senator SPECTER. Senator Metzenbaum.

Senator METZENBAUM. Mr. Chairman, first I would like to commend you for convening this hearing and sponsoring this legislation.

I think the legislation is probably more urgently important than almost any other legislation we have. I offered amendments having to do with the jobs program to the budget resolution. I think it should be passed. Even if it has passed, I do not think it would nearly compare with legislation of this kind.

Frankly, we have been talking about this problem for some years now. The Japanese have come to my city. They have viewed our auto plants. They have spoken well. And they have continued to send their exports to this country. Of course, when I speak about autos, I am speaking about steel, and I am speaking about exports generally.

I think that the dynamics of the situation are such that we cannot afford the luxury of time. We cannot afford to continue the debate. I believe in the strongest possible way that we need to move this legislation forward, not next year or not after we come back from several different recesses, but we ought to expedite its passage in every possible manner. I think that doing so would

indeed mean something as far as jobs in Youngstown, Ohio, and jobs in Cleveland and jobs in Pennsylvania.

I think that this may be the most important jobs bill that we have in the Congress of the United States. I would therefore urge you, Mr. Chairman, to attempt to put this matter on the agenda for the Judiciary Committee. I will do everything possible to help you move it out of the committee, if not at the next meeting, at the one immediately thereafter.

Senator SPECTER. Senator Metzenbaum, I just asked Senator Mathias if procedurally we could place it on the emergency supplemental bill, which is on the floor today. What do you think of this suggestion, given the freedom of germaneness, et cetera, or nongermaneness?

Senator METZENBAUM. I think I would support that effort and very probably join with you in cosponsoring it.

Senator SPECTER. We could not respond much faster than this afternoon.

Senator METZENBAUM. That would be pretty fast.

I think it would be a worthwhile effort to make. I think we probably ought to try to do that. If the worst would happen, we then could come back to the Judiciary Committee and move it there.

I would like to include a statement of mine in the record, Mr. Chairman.

Senator SPECTER. Without objection, it will be inserted at this point.

[Prepared statements follow:]

PREPARED STATEMENT OF SENATOR HOWARD M. METZENBAUM

Mr. Chairman, I am pleased to have the opportunity to once again express my support for strengthening the law which protects American industry from unfair and predatory foreign trade practices.

The bill before us today is both timely and urgent. It sends a clear and strong warning to our trading partners that we will not stand idly by and allow them to flood our markets with subsidized exports and destroy our basic industries.

Nowhere is the impact of unfair trade practices more tragically felt than in the domestic steel industry.

A strong American steel industry is absolutely essential to the national defense. Steel is the backbone of hundreds of other industries, including such giants as automobiles, machinery and construction.

Yet today, more than 100,000 steelworkers are either on permanent lay-off or shortened workweeks. That's twenty-five percent of the entire steel workforce. The industry is operating at less than 50 percent of its capacity. That's lower than the rate at which the steel industry operated during the Great Depression. Plant shutdowns are frequent. And plans to modernize are being shelved indefinitely.

The dismal situation can be blamed substantially on the reluctance of Congress and the Reagan Administration to deal effectively with the problem of surging imports. We are sitting on our hands, Mr. Chairman, while imports capture an even greater percentage of the U.S. market. Today, steel imports account for twenty percent of U.S. consumption. Tomorrow this figure could be even higher.

I'm for free trade as long as it's fair trade. But that is not the situation we face today. Foreign steel producers and their governments have taken advantage of us. We have allowed them to dump their products in our markets below cost. We have watched foreign governments subsidize their steel industries at the expense of American steel companies and American workers.

Enough is enough.

And I am pleased to note that at least some action has begun. Less than two weeks ago, the Department of Commerce issued its preliminary findings in the major countervailing duty case filed several months ago by the domestic steel industry. Commerce confirmed that 1981 steel imports from nine nations were, in fact, benefiting from government subsidies. Penalties will be assessed later this summer.

This is the right course for the Administration to be taking. I hope it will not stray on this and other trade matters which are still pending.

But at the same time, Congress must demonstrate its commitment to fair trade. The legislation before this Committee will help us reach this goal. It will not supersede or replace the administrative remedies which exist today. Antidumping and countervailing duty procedures will still remain in place. However, the bill *will* provide yet another avenue of relief for domestic companies hard hit by imports.

It would grant American industries immediate access to the courts so that allegations about dumping of foreign products could be handled expeditiously.

It would provide companies with all the remedies and rights that would be available under the antitrust laws. It would eliminate the requirement that an aggrieved company must show predatory intent to destroy or injure a U.S. industry. Instead, it would only require proof that the foreign manufacturer's, importer's, or government's action resulted in, and had the reasonably foreseeable effect of injuring the American industry.

The bill also permits a shifting of the burden of proof to the defendants once there has been a simple showing of a violation. And this legislation gives the court authority at any point to bar further imports.

Over and over again people have asked Congress, "When are you going to do something about unemployment and unfair import practices?" For several years, we have answered, in effect, "Not now, but soon."

Well, I submit that "soon" has finally arrived. We have here a chance to act on behalf of American jobs and American businesses. Let us not let it slip away.

TESTIMONY

of

John J. Sheehan, Legislative Director
United Steelworkers of America

The introduction of S. 2167 and S. 2517, the Unfair Foreign Competition Act of 1982, by Senators Specter, Heflin and Mathias, could not have come at a more propitious moment. Presently, major domestic steel firms, together with the United Steelworkers of America as a co-petitioner, are awaiting a decision from the Department of Commerce with regard to charges of unfair competition lodged against most of our European steel trading partners. As a matter of fact, most steel mill products are under import pressure and subject to petitions for relief -- both carbon and specialty steel.

Steel imports have had and continue to exercise a very pervasive influence upon steel production and employment in at least two ways. Of course, our union is painfully aware of the short-term impact that imports have at the time of sharp downturns in the economy, such as we are now experiencing. The economic policies being pursued by the national government, which have resulted in high deficits and high interest rates, have caused havoc in the steel industry. Over 100,000 steelworkers are on layoff and some plants are announcing indefinite shutdowns. The American Iron and Steel Institute announced that unemployment was around 30 percent -- more than three times the national average.

While the union cannot pretend that the failure in the steel market is due to steel imports, it does recognize that the impact of the recently failing economy could be moderated <u>if</u> steel imports did not reach the surge levels of the last several months, at times reaching 26% of domestic consumption. There is, therefore, a short-term equation between job losses and high import penetration, especially when it occurs <u>abruptly</u>.

A lost market means less production and less manpower. Hopefully, if there is to be such a decline, it is gradual and job loss comes through attrition. Manpower-wise, the steel industry is a declining industry. Since 1950, there has been a loss of 232,000 jobs. The rate, however, has been accelerating in the more recent years. In the last two and a half years, there has been a job reduction of 100,000.

But, a lost sale means a layoff. It means unemployment of a particular worker. You can put a name to the unemployed worker.

Furthermore, the sharp increases in steel imports have occurred when there has been a drop in steel demand. We have been experiencing not only relative increases in steel imports but absolute increases in tonnage.

What makes this situation particularly unacceptable is the fact that substantial quantities of steel, which have been entering our markets, have had an unfair competitive advantage because they were either subsidized by foreign governments or dumped at prices below cost of production.

With unemployment as high as it is -- steel imports, whether dumped or not, are intolerable.

I am certain that the short-term exposure of steel imports cannot be denied. However, the long-term influence of imports has been ignored or worse has been accepted. Immediate steel import crises do have the advantage of receding and subsequently the public focus concern is diverted. But, the problem has remained. The fact that imports attain and then retain ever larger shares of the market has been a most important factor in the failure of the steel industry to operate at normal levels of capacity utilization. Productivity is adversely affected and modernization decisions are delayed. Even worse, in some cases, the decision to terminate production is made. Currently, there is serious concern as to whether the steel industry will substantially shrink its productive capacity. Periods of recession

and high imports seem conducive to these decisions, but it is actually the long-term inability to be assured of a stable market that allows obsolescence to grow. A recent article in the Wall Street Journal (May 21, 1982) indicated that steel users are "worried that the industry's shakeout strategy will leave them with fewer suppliers, higher prices, and product shortages .... They are concerned about the liquidation of domestic capacity."

These two aspects of the import problem; namely, immediate impact upon jobs during a recessionary period and long-term influence upon modernization investments during a restructuring period, indicate that -- for steel at least -- there is a need for a steel trade policy. It cannot be one which is governed merely by ascertaining whether steel imports have been unfairly traded. Surely, those determinations, either under our laws or GATT or under the procedures of these bills, should be made. But, focusing upon the unfair or illegal aspects of trade may divert too much attention toward the finding of fault rather than evaluating the status of the domestic industry which is under import pressure -- especially one like steel which, from all accounts, is apparently at the threshold of momentous decisions regarding its restructuring strategy.

These bills hopefully bring another Congressional scrutiny upon steel's threshold -- or crossroad. For the first time our new trade laws with respect to basic steel are being tested. Certainly, the 1979 amendments, evolving out of the circumstances surrounding the MTN ratification, will be most critical for the final outcome in the DOC decisions on the dumping and subsidy charges. But, if the current law fails to be responsive to the steel trade crisis, then certainly aggressive and more pronounced congressional action will be required.

Our union recognizes that a national trade policy is a complex amalgam of many national interests. Normally, adverse

imbalances should, therefore, be handled through an administrative adjudicatory process. Complaints about the post trade laws -- at least from the union's point of view because we saw the erosion of jobs -- were justified. We are now awaiting the testing of the 1979 Act to see whether it is sensitive enough to be able to respond to the modern day problems in international trade. Whether you should entertain another option -- namely, judicial relief -- in handling ordinary trade imbalances and injury remains to be seen. Certainly, additional legislative adjustments of administrative procedures could also be enacted if the system is still adjudged to be so inadequate as to require a separate private recourse to the courts by injured parties.

Our union is not testifying to the desirability (or lack thereof) of another option for determining ad hoc cases of trade injury. Perhaps enactment of a broader access to the courts may be an indicator to our trading partners to desist from inflicting further injury through illegal imports. The bills present an intent for swift and immediate relief with the possibility of triple damage penalties in addition to restraint of imports. However, we are responding to the more basic issue which we think S. 2167 and S. 2517 raise: whether we should develop a special trade policy for steel.

The current trade laws, while promoting a national policy of trade, are not fine-tuned enough to address serious sectoral distresses in terms of a policy perspective. At most the laws allow for ad hoc adjustments upon an administrative finding of injury which is either substantial with regard to fair trade or material relative to unfair trade. However, given the peculiar nature of the international aspect of the steel crisis, this limited governmental ability to respond severely restricts the scope of the approach. All of our trading partners have a defined national policy regarding the steel

industry, covering the whole gamut of governmental involvement up to nationalization. The OECD-International Steel Committee recognized the adverse potential impact such involvements might have upon other countries:

> Participants /of the OECD/ ... agree that domestic policies to sustain steel firms during crisis periods should not shift the burden of adjustment to other countries and thus increase the likelihood of restrictive trade policies by other countries.

Given the actual situation in the world steel market the government should be able to develop a more precise sectoral trade policy. However, statutory authority to negotiate is not adequate to meet the problem.

Hopefully, the outcome of the current steel trade cases might become a basis for a more reasonable and stable steel trade market wherein disruption or surges can be countered and unfair competition stopped.

We await, therefore, with concern the June 10th decision of Commerce which might indeed form a basis for such a policy. If the Commerce Department, under the current trade laws is unable to reach the issue, then perhaps the courts will be equally limited because the issue is more than rapidity of decision. It has to do with the substance of the decision where injury occurs at the time of recession and restructuring.

Senator METZENBAUM. I will join with you if you move, if we all make an effort to put it on the supplemental appropriation this afternoon. I think that is an excellent idea.

Senator SPECTER. Senator Mathias?

Senator MATHIAS. It seems to me that a way to approach that would be, if you would discuss with the leadership on your side the attitude that the leadership might take, and we will do the same on this side.

Senator METZENBAUM. I will do that.

Senator MATHIAS. That would promote the effort.

Senator METZENBAUM. I will actually discuss it with both wings of the Democratic Party on my side. I will have Senator Heflin handle the liberals, and I will handle the conservatives.

Senator HEFLIN. How about my wing of the moderates?

Senator MATHIAS. If you only have two wings, you are fortunate.

The other day I had the great pleasure of seeing Senator Roman Hruska, who was visiting the capital. I said: "Roman, if you were still a member of the Judiciary Committee, you would be among the liberals." [Laughter.]

Senator SPECTER. Thank you very much, Mr. Patterson——

Senator HEFLIN. Let me ask one question. Is there any evidence of joint dumping or joint price fixing from two or more countries at the same time?

Mr. KING. I think on that one, Senator, I would rather pass. We are investigating a matter that, if we are successful and need to file some litigation on it, I think that we would do so; but it would be inappropriate for me to speak to what we are presently trying to do.

Senator HEFLIN. I see that even in private industry bureaucratic answers come forward.

Senator METZENBAUM. It should be reassuring. I think that there are no laws to make it possible for countries to sue lawyers for slander; I think that you have to have an individual, so you are protected.

Senator SPECTER. You are certainly protected in this hearing.

Thank you very much, gentlemen. We very much appreciate your testimony.

I would like to turn now to Mr. Bart Fisher and Mr. Peter Ehrenhaft. Gentlemen, on this panel and succeeding panels we are going to have to observe our time limits fairly closely. We have a very ambitious listing of witnesses: a total of 14 for today. We would very much like to move through our testimony by 1 p.m. if that is at all possible. So, we will ask you to summarize your statements. Any statements presented in accordance with our regular rules will be made a part of the record. We will try to move as promptly as we can. Mr. Fisher, welcome to these hearings. We look forward to hearing your testimony.

Senator MATHIAS. Before Mr. Fisher begins, I have a short statement. Had I arrived on time, I would have delivered it.

Senator SPECTER. It was included at the beginning of this hearing, without objection.

STATEMENTS OF BART FISHER, ATTORNEY, PATTON, BOGGS & BLOW; AND PETER EHRENHAFT, ATTORNEY, HUGHES, HUBBARD & REED

Mr. FISHER. Thank you, Mr. Chairman. My name is Bart Fisher. I took my Ph. D. in international relations at Johns Hopkins and my law degree from Harvard. I have been in trade practice since 1972, with a very wide and diversified practice including a lot of different dumping cases.

I am a partner in the law firm of Patton, Boggs & Blow in Washington, D.C. Also, I am an adjunct professor of international affairs at Georgetown University School of Foreign Service.

I am testifying today, however, on S. 2167 and S. 2517 as a private party at the invitation of the Judiciary Committee and not on behalf of any firm or organization.

Dumping is a contentious and controversial subject. It would be very surprising indeed if any analysis worthy of note on the subject would not be complicated. I would suggest to this committee that at least a 3-tier level of analysis is appropriate.

First, should the United States move vigorously to check foreign dumping? Second, given the presence already of the Anti-dumping Act of 1921 on the books, do we need to have a viable version of the 1916 Anti-dumping Act? Finally, if it is assumed that we do need the 1916 act as part of the mosaic of dumping legislation, how should it be reformed?

I would use the term flaw purposefully because dumping, like a diamond, has many different facets. The subject of examination triggers different responses from different viewers. We may all be blind men feeling different parts of this elephant, Senators, but I think on one point we agree mostly. The current law is unsatisfactory and needs to be reformed or repealed.

Dumping has increased sharply in recent years—this has just been pointed out—for four different structural reasons. First, the dominant economic pattern today in the OECD area, as even the most casual reader of the papers knows, is of slow growth and unemployment. Unemployment in Europe, for example, currently at an 11 percent rate, will be at 15 percent by 1985. The stagnation of the OECD economies has a direct bearing on the problem of dumping. Countries that are mired in a recession with high unemployment rates are very reluctant to add to their pool of unemployed.

The tendency in such circumstances will be for labor to be treated as a fixed cost, much as capital equipment, and for workers to continue to produce items at low subsidized prices with real unemployment being disguised.

The second structural factor which is going to increase dumping is the fact that we are moving increasingly into a foreign exchange-short world. The 1980's will be a decade of capital, credit, and foreign exchange scarcity. The temptation will be stiff indeed for countries suffering serious balance-of-trade deficits to promote exports even at dumping-price levels in order to reduce the balance-of-trade deficits and permit them to buy more expensive energy and other imports.

The third major reason for increased dumping is overcapacity. There is overcapacity today in the world's steel, automobile, petro-

chemical, textile, and many other industries. The presence of this overcapacity will encourage more dumping as firms and countries will reason that they should sell at whatever price the market will bear in order to attempt to cover their fixed capital and labor expenditures. We may especially expect to see this phenomenon in non-foot-loose industries such as steel.

Finally, the emerging importance of governments as promoters of dumping must be recognized. Much has been made of the role of the EC and its 10-member national governments in promoting EC steel dumping. Let me give you another example. The Government of Japan has systematically dumped subsidized rice all over the world in the last decade. It buys rice from its farmers at five times the world price level and then dumps the rice at prices below the world price level. The result of this policy is to knock the U.S. rice industry out of a large part of the world rice market.

We thus come face to face with a staggering new reality of world commerce. In 1900 Brooks Adams said the nation-states were behaving more and more like huge corporations in competition. Today nation-states frequently are huge corporations in competition. This is especially true in such dumping-prone sectors as steel.

In countering the increasing phenomenon of dumping into the U.S. market, what is to be done? In my view, the United States should move vigorously to enforce the Antidumping Act of 1921 and enact a strengthened version of the 1916 act, your legislation, Senator Specter and Senator Mathias. I think it is a very valuable contribution to the debate.

It is true that dumping aids U.S. consumers, but it does so at a frightful cost. First, in areas such as steel, it adds dramatically to the pool of the Nation's unemployed. Second, dumping misallocates world resources to the detriment of consumers in foreign countries as well as workers in the United States. Enforcement of the U.S. dumping laws sends a message to foreign countries, as Secretary of Commerce Baldrige has recently done, that the United States will not let foreign countries profit from trade barriers imposed to maintain their dumping schemes.

The foreign trade and antitrust laws of the United States serve overlapping juridical, political, and economic objectives. From a juridical standpoint, U.S. citizens need to know that their rights against price discrimination, be it foreign or domestic, will be enforced.

From an economic standpoint, it is clear that enforcement of the dumping laws will maximize our production possibilities curve, thus allowing us to produce more with a given amount of goods and resources.

Finally, from a political standpoint, enforcing the dumping laws will rally support for the cause of free trade, as U.S. citizens simply will not see as fair a trade policy that countenances dumping.

One may concede that the dumping laws should be rigorously enforced yet argue that having the 1921 act on the books is enough. I would disagree with that view for three reasons. First, the Antidumping Act of 1921 is an in rem public interest statute which operates against goods and protects industries not individuals. What the law does is to impose an antidumping duty equal to the margin of the dumping that, as Mr. King and others explained before, goes

into the public fisc. In other words, the private petitioner never sees a dime of the money which is collected. The petitioner benefits only indirectly in what I would call a trickle-down basis.

It seems clear to me that we need another statute that directly compensates individuals with money damages to make them whole for the damages they have suffered. We do this domestically under the Robinson-Patman Act. We should do it internationally under the 1916 act as well.

The second point in justification of the 1916 act is that the 1921 act moves on a prospective basis—this point has been made earlier—and not on a retroactive basis. It is entirely possible—and I have been in some of these cases—that the predatory dumping could be checked prospectively under the 1921 act, yet the injured petitioner could be so wasted economically that it could not take advantage of the 1921 act remedy of antidumping duties.

Under the extremely complicated antidumping laws, the entire procedure can take up to 290 days under the 1921 act. Add to this the 3 months that it usually takes to prepare a petition. We are talking about at least a year before we can see justice.

The essence of the problem under the 1921 act then is that justice delayed becomes justice denied. We need the 1916 act to make the injured individual whole on a retroactive basis.

Finally, we need the 1916 act to be reformed as a deterrent to future foreign dumping. Reform of the act by the Congress will undoubtedly be seen as a signal to our trading partners that we will not countenance transfer of their economic and industrial problems to our doorstep.

Finally, I would like to address the specific problem areas under the 1916 act.

I see the yellow light, so I will be brief.

Senator SPECTER. Thank you.

Mr. FISHER. The first problem is that of intent, and this has been alluded to earlier. Under the 1916 act the plaintiff has the burden of proving that the importer had the intent to destroy or injure an industry in the United States. Without a doubt, the specific intent requirement of the 1916 act is the primary reason the statute has fallen into disuse. Unless the specific intent requirement is removed this statute will continue to be a dead letter.

The second problem is that of price. Under the 1916 act the price of the article sold in the United States is compared to the price at the time of exportation of such articles in either the principal markets of the country of production or other foreign countries to which the articles are commonly exported. Unfortunately, this formulation of price leaves a major gap in the law. Let us assume that the People's Republic of China is manufacturing and dumping widgets into the United States which are not used in the domestic market. It exports to no other countries. In other words, the United States is just the target market. I had a case exactly like that in the Polish golf cart dumping case. In that case the court held that under the limited price criteria there could be no relief since there were no exports to other countries and, obviously, no home market price in Poland, which does not even have a golf course.

Your bills, Senators Heflin and Mathias, correct this flaw in the 1916 act. It is simply ludicrous to exempt from the coverage of the

1916 act the situation where there is no home or other export market and the predatory dumper has selected as his target market the United States.

The third point is that of injury. Your bills both do the correct thing, it seems to me.

Senator SPECTER. Mr. Fisher, are you close to conclusion?

Mr. FISHER. Yes, this is the last part.

The bills that you have introduced both bring the 1916 Antidumping Act into conformity with the international antidumping code that was just negotiated by having a material injury standard. I think that would be appropriate and be very useful, as it would tend to compensate knocking out the intent, which would make it much easier to prove and win a case. But at the same time, you would have to have a material injury established. I think that is useful and would bring us into conformity with our international obligations.

Senator SPECTER. Thank you very much, Mr. Fisher. I now turn to you, Mr. Ehrenhaft.

Mr. EHRENHAFT. Thank you very much, Mr. Chairman. I appreciate very much your invitation to testify today.

I am a partner in the law firm of Hughes, Hubbard & Reed. I have written about antidumping since 1958, when I graduated from the Columbia Law School. I was the Deputy Assistant Secretary of the Treasury during the Carter administration, the last person in the Treasury to administer the antidumping law, and was present at the birth of the trigger price mechanism and know quite a bit about that as well. I have, since leaving Government, remained active in teaching and in practice in the trade field.

I assume that in part my invitation to testify this morning derives from the fact that two articles that I have written since leaving Government service have recommended that there be a private action for dumping. I very much favor that essential element of your bill.

I think that the main point about it is that it would compensate those injured by the unfair practice. There is no possibility for such compensation under the Antidumping Act of 1921.

There are two other reasons why I think it is useful to have a private remedy. First, I think it would get the Government out of the business and the bother of confronting other governments about disputes that I think often are better left to an impartial arbiter hearing the competing parties rather than what occurs today. Under present law, as you know, whether it is with respect to clothes hangers from Canada or manhole covers from India, a wide variety of esoteric and unique products, a complainant files a case and, thus, immediately compels the United States Government to have highest level governmental confrontations with other governments. It seems to me that dumping is essentially an economic phenomenon with two producers, or more, arguing about access to the market. They ought to argue about that in a place where an impartial arbiter makes the decision. There is no reason why the Government needs to take up their cause and confront its trading partners with regard to many of these cases.

Second, and I think my feeling is a little bit different than yours, Senator, I think that one of the advantages of court action is not

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the speed but, rather, the completeness of the evidence that would be available for making a determination. The present procedures in the Government require determinations in what you have regarded to be a very long-time period. In fact, they are very abbreviated procedures for finding the facts. The foreign company that is required to produce evidence concerning its home market sales over an extended period of time, and the circumstances of those sales, and the differences in the sales practices that it engaged in at home and over here, has, I know from having represented some foreign companies—including steel companies—difficulty to marshal all of that evidence in the short period of time that is available under our administrative procedures.

I think that an advantage of court cases would be that they would not be as hampered as are the present administrative procedures by statutory time frames. A court could expand the time and have a better record on which to rule.

Having said that I favor the bill for these three reasons, I would like to discuss a couple of problems that I see with the legislation that you have proposed.

First, I think treble damages are inappropriate for most dumping cases. If there is predatory behavior, then I think the existing antitrust laws are going to be adequate for dealing with it. For ordinary dumping, which can so easily occur in these days of rapidly fluctuating exchange rates, I think it would be a disproportionate remedy for the real evil involved. If you are talking about compensating someone for injury, single damages are enough. I would recommend that.

Second, I am a little bit concerned about the weight being given to preliminary determinations by the Commerce Department in shifting the burden of proof. The preliminary determination is just a one-sided determination. It is based only on what the Commerce Department has looked at, without giving the other side a real opportunity to examine it or refute it. I do not think that a preliminary determination would be a fair basis for shifting the burden of proof in court cases. As in antitrust cases, I think a final agency determination ought to be a prerequisite before the burden of proof shifts.

Third, your bill requires the plaintiff to prove injury to industry. I think there are going to be a lot of procedural problems in proving injury to industry. How does he prove that? How does one party get the information about the other members of the industry to prove those kinds of facts? I think, if you are talking about a private remedy bill, you ought to allow a private plaintiff to sue a particular company that is injuring him and limit the remedy to that particular injured party and not obligate him to demonstrate industrywide injury.

Fourth, the bill fails to spell out what kinds of justification of dumping the foreigner might prove. I think it would be critical to include in the bill some indication of what kinds of justification you have in mind. I think a meeting-competition defense, for example, would be critical in order to preserve the rights of consumers, without adversely affecting American industry.

Finally, to insure uniform interpretation of the law, I think that the bill should provide for the primary jurisdiction of the

Commerce Department and the ITC if contemporaneous cases are pending before them. That is a concept that is usual in our law when there is a court case pending and there is contemporaneous agency action concerning the same matter.

The bill also could provide that all appeals in these kinds of cases should go to the new Federal circuit court. Just as all appeals from the Court of International Trade, that review determinations of the Commerce Department and ITC, go to that court, I think that appeals from the suits this bill would authorize should go to that same court for uniformity.

There are two other points that I would like to address. First, Senator, much of your comment this morning has concerned the speed that you believe would derive from this kind of legislation. I must say that, based on my experience in administering the Antidumping Act and as a practicing lawyer, I am rather dubious that court actions would expedite final resolution of these matters.

Under the standards applicable in the Federal courts for granting injunctions, irreparable injury must be shown before an injunction is going to be granted. If you are going to provide money damages, as you are in these cases, I think it is very difficult to prove that irreparable injury. I think speed therefore is not going to be a likely result.

The other point is that, before we plunge into another amendment of the antidumping law, I would urge this committee to support some kind of study about the trade effects of our existing laws. No such real study exists yet. The GAO did a study of the Antidumping Act of 1921. It found that, while half of the cases did show the kind of surge of imports that Mr. King was talking about this morning, at least half of them showed the opposite. It proved just what importers said, namely, that as soon as a case was filed, trade stopped. And that is not right either.

The Customs Service today has no adequate means for determining, "What is the impact of existing antidumping orders? What is the impact of countervailing duty orders?" We need those kinds of facts before we jump in and create still another remedy.

Prof. Arthur Miller of Howard Law School recently wrote that 2 percent of the U.S. gross national product is now being diverted into legal costs. That is an enormous tax on our economy. As a lawyer, I am appalled by it. I think that, before we create another cause of action, we ought to study what our existing statutes do. Thank you, sir.

Senator SPECTER. Thank you very much. Senator Mathias.

Senator MATHIAS. No. 1, I welcome your call for a study of the impact of existing law because I have been pleading for that for some time. I have a bill pending in this committee which would call for just that. I want to enlist you here and now as a worker in that vineyard. That is an idea that is long overdue.

The reason it has not gone forward is the lack of public support, the lack of business support. Some of the great corporations of this country are afraid of what that finding might be or are afraid of what the action might be that would flow from the finding. But it is absolutely necessary that we make that study and come to some conclusions. So, I am delighted that you support the concept.

Speaking of ideas whose time has come, of course, this whole idea of making dumping part of the antitrust law seems to be one. It is refreshing to look out here in this audience today and see a room full of people. Three years ago, when I introduced a bill, you couldn't get a corporal's guard to come talk about it, with the exception of a few embassies around town that were afraid we were trying to impose the American antitrust laws extraterritorially. So, what a difference a little time makes.

I was interested in the quotation about nation-states acting like corporations. As a further confirmation of that concept, one of the justifications offered by the Republic of France for nationalizing some of the largest companies in France is that in that way they can provide adequate capital support, which would not be available in competition with even greater multilaterals. That is a direct movement of the government into business for business reasons.

Finally, rather than take the time up with pinning you down on the details of your various suggestions on drafting, which are valuable and which I listened to with great care, let me ask you this. Are you going to be available after this hearing? Could you meet with some of the staff on drafting questions?

Mr. EHRENHAFT. Certainly.

Senator MATHIAS. I think maybe that, Mr. Chairman, is the most useful way to approach that.

With that then, I will subside.

Senator SPECTER. Senator Heflin?

Senator HEFLIN. Do other countries or even the countries that dump have antidumping laws? If so, I realize they vary from country to country, from the more stringent to the less stringent. Could you give us some brief analysis of that?

Mr. EHRENHAFT. Senator Heflin, the European Community has a dumping regulation which is quite similar to our own except that they administer it rather differently. Ours is what we would call a judicialized process with very many kinds of procedural safeguards for all of the parties and a lot of lawyering that goes into the process. The European Community has a much more administrative procedure, a more streamlined procedure, and one that American exporters to the Community, I think, find somewhat objectionable because it is somewhat of a star chamber proceeding. But it is sure faster and in some ways more efficient. But the substance of the European Community's antidumping law is very similar to our own.

The Australians and the Canadians are the only other countries that really have antidumping laws similar to our own and enforce them. The Canadian statute is, in some ways, I think, somewhat harsher than our own. It gives even greater discretion to the government officials administering it to make decisions without opportunities for judicial review and opportunities for challenge.

Those are the other major countries that have such laws. Japan, for example, while it may have an antidumping law, has, as far as I know, never enforced it. So, the Community, Canada, Australia, the United States are the major trading countries of the world with antidumping laws.

Senator SPECTER. In view of our limited time, I will ask only one question. Mr. Ehrenhaft, let me direct it to you. Why do you say

that it would be impractical to have a more prompt determination of dumping in terms, for instance, of showing that an import is being sold in the United States at a price which is lower than it is being sold in its own domestic market? Are not those facts susceptible to fairly ready ascertainment to be established as a matter of proof of dumping?

Mr. EHRENHAFT. I think that it depends very much on the product. But I would say by and large it is not easy to prove. What one is talking about is not a single importation and a single sale abroad. Under our existing administrative procedure, one has to look at all sales, for example, during a 6-month period. Take, for example, steel products entering into the United States. There are over 2 million entries of steel products into the United States. Even if one is talking about a specific type of steel, let us say sheet steel, cold rolled sheet, there are probably 400,000 of those entries, and they come from a variety of countries. They have a variety of shapes. They have a variety of finishes. They have a variety of manufacturing techniques.

Senator SPECTER. Let me interrupt you there. Why become involved with that? If you have an allegation that company X is selling a product, at a price in the United States lower than that which it is sold at in the foreign country, why not simply establish that fact?

Mr. EHRENHAFT. Because it is not simply a question of selling that one sheet of steel. Normally, if we are talking about steel, let us say, the facts are that a producer of cold rolled sheet is going to be selling to a variety of customers both in the home market and in the United States over a 6-month period. There will be different credit terms, different delivery terms, different warranties, different specifications concerning surface treatment, width, thickness, quality of steel. All of these kinds of things one has to consider in determining whether the price of the imported product is higher, lower, or the same as the foreign product. It sounds easier than in fact it is.

As I was suggesting earlier, in the steel case in which I participated, just tracking the steel sales of one of the producers in the home market involved ascertaining all of these facts with regard to thousands of transactions both in the home market and in the United States, just within a 6-month period. And that information is not that readily available.

Senator SPECTER. Why is there a necessity for a 6-month period? What is so magical about that? Why wouldn't a much more constricted timeframe be acceptable?

Mr. EHRENHAFT. Because I do not think that you can appropriately establish dumping as a commercial practice based on a few isolated transactions. You are showing a course of conduct. I think that 6 months is about the minimum period of time that it would be appropriate for showing that.

Senator SPECTER. The difficulty is that, if you postulate all of those requirements, you are building a very complex factual issue. With as much dumping as there is alleged and, apparently, occuring, we must be able to devise some abbreviated procedures to arrive at the same essential conclusion.

Mr. EHRENHAFT. I think the current administrative procedure is quite abbreviated and, with the opportunity for retroactive application of duties, is also a significant deterrent. If in addition you had the opportunity, as you have proposed, for damages for past dumping, the fact that you could not take the action that quickly I do not think would be so serious a drawback.

Senator SPECTER. How much more complicated is a dumping action on the issue of a sale in the home market at a lower price than a sale in the United States? How much more complex is that than the determination in the *Mobil-Marathon* case as to whether there was a violation of the antitrust laws—a litigation matter which took only a few weeks to conclude before a U.S. district judge?

Mr. EHRENHAFT. I think that it is much, much more difficult than that *Mobil* matter. That concerned only the following questions: One, does the plaintiff have a viable antitrust complaint and second, would it serve to prevent a scrambling of the eggs to enjoin the companies from merging at that moment while we examine the merits of the compliant? Those are rather simple kinds of questions, that can be answered on the basis of expedited discovery, in a matter of weeks. The kinds of calculations you are talking about in an antidumping case, particularly where you are talking about trying to find a precise margin of dumping from which to calculate damages, would be much more complicated than the issues that face the judge deciding whether he ought to grant an injunction in those contested tender offer cases. I do not think that that is an apt analogy.

Senator SPECTER. Gentlemen, thank you very much. We very much appreciate your being with us today.

Senator HEFLIN. Let me ask one other question. I asked the other question and the gentleman did not want to answer it. You may be in a different situation.

In your experience, have you had any reasonable suspicion that there has been price fixing, in effect, or conspired joint dumping going on in the United States from two or more countries?

Mr. EHRENHAFT. Is the question directed to me?

Senator HEFLIN. Either one of you.

Mr. EHRENHAFT. Well, first, I think that one of the dangers of this kind of legislation that we are now talking about is, indeed, that it could be a way under which domestic industries and foreign industries could conspire to raise prices in the American market. After filing a dumping action with regard to a foreigner's prices, the two parties could get together and, in the guise of settling that litigation, agree upon raising their prices here. I think that that would be a real danger. I would assume that, if this bill became law, there would be opportunities for public comment on any settlements that would allow the Justice Department or others to intervene, were that to be the case.

Certainly we have seen, in cases involving many products, that dumping occurs from a number of countries at the same time. In the steel situation, as you know, the complaints filed by the major U.S. companies allege that dumping is occurring from not only the European Community, but also from a number of other countries in South America, South Africa, and some other countries of

Europe that are not members of the European Community. So, whether they conspire together or not, there certainly can be and often is dumping by a number of foreign producers at the same time. They claim largely that they are trying to meet the American market price. While they may have a protected home market that enables them to charge more at home, they are selling at a lower price here to meet their competition, competition both from other foreigners and domestically. That then puts them into a dumping situation.

Senator SPECTER. Thank you very much, gentlemen.

Our next panel we have selected from related industries: Mr. A. J. Leaderman of Rockland Industries, Inc.; and Mr. Walter Ousterman of Kaiser Cement Corp. I think we will ask at the same time Mr. William Knoell, who is under the category of specialty steel representative, from Cyclops Corp., to join the panel. We will hear from all three gentlemen.

We would like to begin with you, Mr. Leaderman.

STATEMENTS OF A. J. LEADERMAN, CHAIRMAN OF THE BOARD, ROCKLAND INDUSTRIES, INC.; WALTER J. OUSTERMAN, PRESIDENT AND CHAIRMAN OF THE BOARD, KAISER CEMENT CORP.; AND WILLIAM KNOELL, PRESIDENT, CYCLOPS CORP.

Mr. LEADERMAN. Mr. Chairman, my name is A. J. Leaderman. I am with Rockland Industries, chairman of the board.

I have been a student of the textile business for 45 years, having started in the textile business when I was 18 years old.

I am a world traveler and have been to most of the countries that produce textiles all over the world, including the People's Republic of China 8½ years ago where I visited the mills. I have done a great deal of business with them and just about every other textile producing country.

The U.S. textile industry is one of our crown jewels. Aside from being a large user of labor in skilled, semiskilled, and unskilled areas, the textile industry takes pride in the fact that our plants are the most modern, the best developed, the best run in the world. The very nature of the textile manufacturer's place in our community is unique.

By this I mean that many smaller companies are run by families such as Alice Mills, Greenwood Mills, and so forth, who have established a highly community-minded climate. And so have the larger companies such as Springs Mills and others they have had great importance in creating the stability, security, and well-being of the areas in which they are located. Textile workers, who are semiskilled and unskilled, are really immobile. They are not among the group that has been overpaid. We are a very competitive industry in the world market. We do export quite a bit of textiles.

The domestic textile business is being seriously hurt right now by the importation of textiles from controlled communities and semicontrolled communities. The damage being done is unrealistic. If we take the cost of the fiber and just a minimal cost of manufacturing, we find that in many instances there is no way that they can be even getting the cost out of the goods. It is a very obvious case of dumping. Classic examples, of course, are in some of the

areas that I am particularly familiar with such as the printcloth areas. It shows that very little more than the fiber content and the freight and the shipping is coming back. The result is that our mills have had to curtail operations. It is unheard of. Greenwood Mills, who happen to be a very large organization and a very, very well-run organization, for the first time, I believe, in their history are running every other week and have had to curtail to that extent. Many, many mills are covered up. More looms are covered up today in the United States than at any time that I can remember.

They have three alternatives. They can lose money. They can close down. They can curtail. Or they can do all three.

The pricing that is being put on us is calculated to do just that. The markets are being singled out. Certain fabrics are being singled out. They are being sold at such prices and in such quantities as to actually do away with the domestic supply.

There has also been some misclassification. In textiles we have some quotas. We have one example of misclassification in the case of gauze. Gauze used as a health care item, a medical item, is being brought into our country now from mainland China and from other places. It is being misclassified. A 1-yard piece of gauze——

Senator SPECTER. Mr. Leaderman, the 5 minutes have expired.

Mr. LEADERMAN. All right, I will bring it to a quick close if I can.

This is being brought in under another classification so they can get around the quota. Of course, the industry must find a way of stopping the import of this kind of goods at less than the cost here.

The U.S. capabilities are, as I said in my opening remarks, the finest in the world. It is an obvious thing. The situation is one of simple dumping for job reasons and economic reasons in the countries that are exporting to us.

Senator SPECTER. Mr. Leaderman, would you tell us where that particular fabric came from?

Mr. LEADERMAN. That fabric is just an example coming from mainland China, which is a controlled economy. I have been to the mills. A mill where we will have 400 people working, they have 4,000. If you ask what the cost of labor is, you are told that it is 17 cents an hour. If you calculate it on the basis of the numbers of people that they have and the product that they have, it is nothing. So, basically that is one, but similar things, maybe a little different, are happening from countries like Taiwan and Korea. They are gun pointing on a specific product where there is big usage, big tonnage, and high labor usage.

Senator SPECTER. Your point is that those textiles are sold below the cost of production notwithstanding a 17-cent-per-hour cost?

Mr. LEADERMAN. That in itself is not a fair thing because, if our wages are $5 an hour——

Senator SPECTER. I understand that, but I would like a response——

Mr. LEADERMAN. Even at that, yes, I am saying that there is no correlation.

Senator SPECTER. Even at 17 cents an hour the articles are sold below the cost? Are you saying that the fibers themselves are more expensive than the cost?

Mr. LEADERMAN. No, I am saying that the cost of the fiber plus the packing and shipping in many cases would exceed the total selling price.

Senator SPECTER. Thank you very much.

Next I would like to hear from Mr. Walter Ousterman.

Mr. OUSTERMAN. Mr. Chairman, I am a graduate of Rutgers University and Harvard Business School. I am not a lawyer. I started in the production end of our company. I ran our international operations for a while and 5 years ago became president and chairman.

Kaiser Cement is the largest cement producer in the western United States and an industry leader in the conversion to modern fuel-efficient cement production processes. I sincerely appreciate the opportunity to testify today in support of Senate bills 2167 and 2517.

Mr. Chairman, in my remarks today I will summarize my prepared statement, which I ask to be included in the record.

Senator SPECTER. Your full statement as well as Mr. Leaderman's statement will be inserted, without objection.

[Prepared statements follow:]

PREPARED STATEMENT OF ALEXANDER J. LEADERMAN, ROCKLAND INDUSTRIES, INC.

The U.S. textile industry is one of our "crown jewels". Aside from being a large user of labor in skilled, semi-skilled, and unskilled areas, the textile industry takes pride in the fact that our plants are the most modern, the best developed, and the best run in the world. The very nature of the textile manufacturer's place in his community is unique.

By this, I mean to point out that as many smaller companies have been run by families (such as Alice Mills and Greenwood Mills) and have established a highly community-minded climate, so too have the larger companies (Milliken, Springs) had great importance in creating stability, security, and well-being for the areas in which they are located. Except for management, most textile mill workers are immobile. Their roots go back many generations to the towns and the mills. They are not among the group that has been so overpaid as to make their productivity noncompetitive in the world markets, with the exception of three areas:

Controlled economies such as Mainland China and semi-controlled economies such as Korea or Taiwan. The damage being done to our textile industry and to the citizens of our country, through unrealistic quotas and/or by mis-classification where textiles are concealed in other categories, is causing a disruption of textile production. There are classic examples of where the pricing of goods being dumped in our market from the three areas (i.e., Mainland China, Taiwan, and Korea) are priced in such a way that they are under the cost of our manufacture. An investigation shows that the selling price is sometimes very little more than the cost of the fiber content. The result is that our mills have had to curtail operations, lose money, or close down—or all three. Their pricing is calculated to do this.

The mis-classification of products is a ploy to get around the quotas: One example of mis-classification that I know of is where gauze in one-yard squares, folded and sewn, is brought into this country as a "medical product" instead of as a "textile product". Thereby, they avoid the "textile" classification and quotas, which also changes the amount of duty. The amount of cost to put a stitch around the edge of an 18" × 18" folded fabric is minuscule; the purpose is obvious.

The textile industry has great importance in time of peril and/or disaster, as well as great importance to our national security. We cannot allow ourselves to experience the same results as England and Europe have seen.

The balance of trade is not involved; however, we are all aware that when we are dealing with a controlled economy, fairness to our own economy dictates that we have constraints on what can and cannot be practiced.

The textile industry must not be considered an expendable industry.

Even the biggest and most efficient companies are threatened with being unable to cope with the type of unfair treatment to which they are being subjected by the importation of textiles from the "controlled" and "semi-controlled" economies like mainland China, Korea, and Taiwan.

It is critical that we face the problem squarely and come to a fair and equitable resolution for the common good of the United States' textile industry.

LAP SPONGES ARE BEING IMPORTED AS "NON-STERILE SPONGES", CATEGORY NO. 3865040

From Taiwan: 1981, 2,744,000 lb × 14 yd/lb = 38,421,600 yards; 1980, 2,250,000 lb × 14 yd/lb = 31,500,000 yards.

From the People's Republic of China: 1981, 696,000 lb × 14 yd/lb = 9,744,000 yards; 1980, 70,000 lb × 14 yd/lb = 980,000 yards.

KAISER CEMENT

KAISER CEMENT CORPORATION, KAISER BUILDING, 300 LAKESIDE DRIVE, OAKLAND, CALIFORNIA 94612

Statement in Support of

the Testimony of Walter E. Ousterman, Jr.

President, Chief Executive Officer and Chairman of the Board,

Kaiser Cement Corporation

Mr. Chairman and members of the Committee: I am Walter E. Ousterman, Jr., Chairman of the Board, President and Chief Executive Officer of Kaiser Cement Corporation. Kaiser Cement has been a cement producer since 1939 and is the largest producer in the western United States. Currently, we are completing the largest capital spending program in our history and as a result lead the industry in the use of modern, fuel-efficient cement production processes.

I sincerely appreciate the opportunity to testify in support of S. 2167 and S. 2517, two versions of the "Unfair Foreign Competition Act of 1982." This legislation would bring about a needed revitalization of the antidumping provisions of the Revenue Act of 1916, provisions that can play an important role in safeguarding U.S. industries, workers and consumers from the serious injury, dislocation and ultimately high social and economic costs imposed by the dumping of foreign merchandise in the United States.

It is needed legislation, because to date the 1916 Act has not been an effective antidumping remedy. To the best of my knowledge, it has been invoked only one or two times in all of its history, and no proceeding has been pursued to a successful conclusion, although the outcome of the massive Zenith litigation* is not yet definitely

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* Zenith Radio Corp. v. Matsushita Electric Industrial Co., Ltd., 494 F. Supp. 1190 (E.D. Pa. 1980), appeal pending, No. 80-2080 (3d Cir.).

established. As I understand it, this largely has been due to perceived problems with the 1916 Act's requirement of a showing of specific intent to destroy or injure a United States industry, and the availability of another remedy that does not impose that requirement.

Yet the alternative remedy -- the 1921 Antidumping Act, now incorporated in Title VII of the Tariff Act of 1930 -- has also not been entirely effective. Its proceedings are complex, increasingly costly, uncertain of outcome, and essentially only prospective in effect. It permits importers and foreign sellers in most cases to dump in the United States without even the risk of incurring a penalty, until a complaint has been filed and preliminary determinations of less-than-fair-value sales and injury have been made. Most importantly, perhaps because of these factors, the Tariff Act provisions have not proven to be an effective deterrent to dumping, a fact illustrated by the multiplicity of complaints filed in recent years.

S. 2167 and S. 2517 would address these issues. As I understand these bills, they differ in a number of respects, but embody similar basic concepts. These are to: (1) provide that the 1916 Act is one of the antitrust laws of the United States defined in Section 1 of the Clayton Act, thus making available the remedial provisions (including injunctive measures) applicable to those laws: (2) apply criminal sanctions to the knowing dumping of foreign merchandise in the United States; (3) increase the amount of the fine assessed for violation of the Act; (4) provide for a private remedy and the recovery of treble damages by persons or firms injured by dumping; and (5) strengthen the jurisdictional, venue and discovery provisions of the statute.

The U.S. cement industry's experience with the dumping of foreign cement in this country illustrates why enactment of these provisions is necessary.

Since at least the late 1950's, the United States cement industry has been the frequent target of dumped cement imports from a variety of foreign sources. In this period, 21 complaints were filed by

the U.S. industry, most of them in the late 1950's and early 1960's, although the most recent was filed in 1977. In most of these cases sales at less than fair value were found. In a number of these, a determination was made that the domestic industry was injured or threatened with injury as a result of the dumped imports. However, in only four cases were dumping duties actually assessed.

One of the reasons for the large number of cases filed in the 50's and 60's was that during this period dumping was on a continuing basis, with importers shifting from country to country as complaints were filed against their sources of supply. In this period, there were formal proceedings involving cement imports from 15 different nations.

This history may seem somewhat surprising, because cement has a low value-to-weight ratio, and transportation costs severely limit the distance from the producing site at which cement can be sold competitively at a profit. Therefore, as a rule markets are sharply localized. It appears, however, that some foreign cement producers have strong incentives to penetrate and exploit U.S. markets, and the ability to do so, so long as they can rely upon high prices in their domestic markets — and other foreign markets where they have little or no domestic competition -- to subsidize their U.S. sales. This is particularly true when they have excess capacity, due to the construction of new facilities or reduced demand in their home or other export markets.

Our interest in these matters, and in the legislation before this Committee, arises because the dumping of foreign cement in the United States is not simply an historical problem. It is a current and very pressing reality. It is a reality made especially injurious by the vulnerable position in which the industry today finds itself, as a result of both slack demand in cement consuming sectors brought about by the current low levels of construction and related activity, and the capital expenditures required to convert to energy-efficient cement production processes meeting applicable environmental standards.

Last year, two new terminals were opened at major ports in

California, the express purpose of which is to serve as facilities for the receipt, storage and U.S. distribution of foreign cement. In March, 1981, foreign cement began to be imported through a new cement terminal at the Port of Stockton, California, capable of handling at least 500,000 tons per year. A few months later, another new cement terminal — with an estimated annual throughput capacity of 600,000 tons — was completed at the Port of Long Beach, and importations commenced at once. At the Port of San Diego, an importer has been entering foreign cement since 1979 under a license to import 150,000 tons annually through that port's facilities. In addition, construction of still another terminal, with facilities capable of handling 500,000 tons of cement per year, is being actively pursued by the Port Commissioners of the Port of Redwood City, California

Together, these facilities will have the capacity to handle more than 1,750,000 tons of imported Portland cement annually. This potential volume is equivalent to more than 15 percent of the rated capacity of all California cement manufacturers, and more than 21 percent of the cement actually shipped by California manufacturers last year. Moreover, these volumes do not represent a cap on the imports that ultimately may flow through the terminals. One importer is currently talking of a possible doubling of its capacity.

The U.S. cement industsry thus finds itself confronted, almost overnight, by a <u>permanent</u> establishment with a very substantial capacity, dedicated to the importation and sale of foreign cement in the California market. This is not a situation where imports are brought into a market to satisfy temporary shortages caused by plant breakdowns, strikes, or unusually high demand. The market share sought by the importers can only be appropriated at the cost of U.S. producers located in an already highly price-competitive market, a cost manifested in lost profits, idled production, foregone plant renovations and construction, and lost jobs. But conversely, the U.S. construction industry will not be able confidently to rely on these imports as an always available source of

supply, for their availability will likely be affected by the uncertainties inherent in extended supply lines, as well as developments in the foreign suppliers' other markets.

If the terminal imports succeed in capturing the permanent share of the market that they seek, it will be by dumping. Based on Kaiser's considerable experience in international markets, we know that it is virtually impossible for foreign producers to export cement to the United States at other than dumping prices.

And that is precisely what is going on. Foreign cement is being imported from Japan and Australia through the California terminals at very substantial dumping margins. Our investigations have shown that during a recent six-month period, cement produced in Japan for export to the United States sold at an export mill price of about $37.00 per metric ton. That compared with about $60.00 a metric ton for cement sold in like quantities to comparable classes of domestic customers in Japan during the same period. Preliminary figures from Australia indicate even greater dumping margins in the sales of cement from that source to the United States. They reveal an export price for sales to the United States in a recent period of approximately $32 per metric ton, compared with an Australian domestic price of roughly twice that amount.

It is of more than passing interest that in the cases of both foreign sources, it appears that cement is being sold for exportation to the United States at a price that is not only greatly lower than prices in the foreign suppliers' home markets, but also lower than their prices to other export markets. In the case of Japan, these practices are coordinated and directed by an export association of Japanese cement producers. Moreover, according to the Japanese Federal Trade Commission, Japanese cement producers have entered into agreements to keep Japanese domestic prices at high levels.

In view of the very sizeable dumping margins that appear to be present and the extensive international trading experience of the importers and foreign cement firms involved, it would seem that those

engaged in this trade must know that they are selling at less than fair value. Yet it appears that they are intent on proceeding, without regard for the damage that their activities inflict upon the U.S. industry. We understand that informal efforts by the United States Government to raise the matter of cement shipments to the California terminals with Japanese officials has produced to date little indication of concern or even interest on the part of the Japanese.

I must emphasize that we do not object to rigorous and fair competition. Indeed, our industry is highly competitive. Because of substantial investments that we have made, and are in the process of making, our cement production facilities are modern and efficient, our workers are well trained, and our markets are among the strongest in the Country. Foreign exporters of cement have no competitive advantage over us in terms of technology, and in fact most are dependent on higher cost fuels than are available in the United States.

We do, however, strongly object to unfair trade. In particular, we object to the establishment and operation of facilities which permit foreign producers, buoyed by profits from sheltered domestic markets, to dump their excess production in our markets at prices manifestly less than fair value. Such dumping disrupts U.S. cement markets and depresses prices, thus eroding profits that are needed for the modernization and expansion of production facilities, so that we can stay competitive and continue to serve our customers.

The fact that such blatantly unfair conduct persists strongly suggests that in this respect our laws are not adequate. I cannot say whether this is because the pursuit of antidumping remedies is known to be time-consuming and expensive for the U.S. industsry, because the ultimate application or non-application of those remedies remains somewhat unpredictable, because the penalty finally assessed when action is taken is not severe, or because of some combination of these factors. We suspect, however, that if the penalty imposed for such obvious and intentional dumping were greater, it would be ventured with less

impunity. Certainly, this should be the objective of any antidumping statute -- to prevent dumping.

This objective would be served by enactment of provisions of the kind contained in S. 2157 and S. 2517. Revitalization of the treble damage and criminal provisions of the 1916 Act should materially enhance the deterrent effect of our antidumping laws. This is of great importance to us, because at present even the successful prosecution of antidumping proceedings under the Tariff Act provisions will do no more than halt future imports at less-than-fair-value from present sources of supply. It will not prevent the importers concerned from turning to other foreign supply sources, forcing domestic producers to initiate proceeding after proceeding, always with no assurance of ultimate success. Indeed, the present law poses no disincentives whasoever to this course of conduct by the importers.

The bills' provisions permitting U.S. domestic industries to recover in an antidumping action damages suffered as a result of the unfair practice are also valuable. These provisions are a marked improvement over the limited, prospective relief accorded by the Tariff Act provisions for even the most blatant and predatory dumping. Under the Tariff Act provisions the United States Government -- not injured domestic firms or displaced workers -- receives any additional duties collected, and often no penalties whatsoever are paid by the importers or foreign sellers. In contrast, the bills would provide compensation for those injured by the unfair practices, thus improving their chances of a successful recovery from the damage caused by the dumping. In addition, the availability of improved discovery provisions under the bills would assist in mitigating what is now a substantial element of the cost of seeking antidumping relief -- the expense of acquiring pricing data and other relevant information from the foreign countries where the suppliers are located.

We therefore strongly support the adoption of the principles incorporated in S. 2167 and S. 2517. They are valuable additions to this country's defenses against unfair international trade practices. I hope that the Committee will advance this legislation as expeditiously as possible.

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Mr. OUSTERMAN. It is my view that the legislation you are considering here today is needed because to date the antidumping provision in section 801 of the Revenue Act of 1916 has not been an effective antidumping remedy. As I understand it, this has been due largely to perceived problems with the act's requirement for showing a specific intent to destroy or injure a U.S. industry.

An alternative remedy, the 1921 Antidumping Act, now incorporated in title VII of the Tariff Act of 1930, has also not been entirely effective. These Senate bills would revitalize the 1916 act's provisions, filling a gap existing in antidumping remedies.

As I understand these bills, they differ in a number of respects but embody similar basic concepts. They should be part of our antidumping arsenal. Our interest in antidumping remedies in the legislation before this committee arises because the dumping of foreign cement in the United States is a very pressing reality. Within the recent past three new import terminals have opened in ports in California. A fourth is currently being planned. These terminals with a total annual capacity of 1,750,000 tons of cement are intended for the express purpose of receiving, storing, and distributing foreign cement in the United States. Their estimated capacity is equal to more than 15 percent of the rated capacity of all of California's cement manufacturers, more than 21 percent of the cement actually shipped by California manufacturers last year. At least one of these importers is considering doubling his capacity.

The U.S. cement industry thus finds itself confronted almost overnight by a permanent establishment with very substantial capacity dedicated to the importation and sale of foreign cement in the California market. This is not a situation where imports are brought into a market to satisfy temporary shortages caused by plant breakdowns, strikes, or unusually high demand. Instead, the importers seek to appropriate a substantial segment of the California cement market at a time when that market already is in a weakened state due to slack demand.

If the terminal imports succeed in capturing the permanent market share they seek, it will be by dumping. Most U.S. producers and American workers will pay dearly for it. Based on Kaiser's extensive experience in international markets, we know it is virtually impossible for foreign producers to import cement to this country at other than dumping prices. Our preliminary investigations confirm that the Japanese and Australia cement coming through these California terminals is being sold to the importers at very substantial dumping margins. Our research indicates that the Japanese cement is being sold at margins of substantially more than 50 percent. Australian cement appears to be coming in at margins of nearly 100 percent.

I must emphasize we do not object to rigorous and fair competition. Our industry is highly competitive. Foreign exporters of cement have no inherent competitive advantage over us in terms of technology. Foreign cement plants are no more efficient than ours, and most are actually more dependent on higher-cost fuels.

Given the additional cost of transportation and handling cement with its low weight-to-value ratio, it is obvious the only way foreign cement producers can capture markets in this country is by dumping. In view of the size of dumping margins that we have discov-

ered, the importers and the foreign producers engaged in the unfair trade must know that they are selling at less than fair value, yet the imports continue to grow.

The fact that such greatly unfair conduct persists strongly suggests our laws in this area are inadequate. I suspect that, if the penalty imposed for obvious and intentional dumping were greater, it would be ventured with less impunity. Certainly, this should be the objective of any anti-dumping statute.

Revitalization of the treble damage and criminal provisions of the 1916 act should materially enhance the current effect of our anti-dumping laws.

Senator SPECTER. Mr. Ousterman, are you close to your conclusion?

Mr. OUSTERMAN. Very close.

Senator SPECTER. Thank you.

Mr. OUSTERMAN. This is of particular concern to us. Under the current system, if antidumping proceedings were launched against imports from Japan and Australia, for example, there would be nothing to prevent the importers from turning to other sources of supply, forcing the domestic industry to file case after case with no certainty of ultimate success. Moreover, effective provisions permitting U.S. industries to recover damages suffered as a result of dumping are urgently needed in order to make injured firms whole and to assist them in recovering their competitive place in the market. In addition the bills' improved discovery provisions would also help to defray the cost of acquiring pricing data and other relevant information in a foreign country.

The principles embodied in Senate bills 2167 and 2517, therefore, are important and necessary additions to this country's defenses against unfair international trade practices. I applaud the committee for its concern about these inequities and hope that you will advance this legislation as expeditiously as possible. Thank you.

Senator SPECTER. Thank you very much, Mr. Ousterman. I now would like to hear from Mr. William Knoell, from Cyclops Corp., a specialty steel representative.

Mr. KNOELL. Thank you, Senator. I am Bill Knoell, president and CEO of Cyclops. I am appearing for Cyclops, a producer of both specialty and carbon steels, and for the specialty steel industry, which consists of some 17 domestic producers.

This is a subject that is near and dear to my heart. Five, six, or seven years ago I testified before the House Trade Subcommittee, urging amendments along the lines of what you are now proposing. Before I get into those amendments, let me just take a couple of minutes and put things in perspective for you.

The specialty industry in this country, by the admission of our foreign competitors in trade cases, by studies done by an arm of the Congress, is an efficient, competitive, technologically advanced industry. Indeed, your own study reported that, if the trade laws were enforced, if fair trade prevailed throughout the world, we could be a major exporter of our product.

But, in spite of this competitive posture that we feel we are in, our situation today is distressing. The level of imports is having a terrible impact on the industry, and the situation is acute. Just

since the first of the year, two major specialty producers have folded their tent. Bethlehem Steel, the largest producer of tool steels, has gone out of business. Colt Industries has announced that they are going to shut down the Crucible Midland plant, a producer of stainless and alloy steels.

There is a crisis in steel, but if a solution is to be found we have got to look at it in a longer view. The steel trade problem has been going on for two decades, and the roots are very deep. Unfortunately, most of the solutions that have come up in the steel industry have been designed to deal with the crisis that existed at the moment.

Just one more point that I think you should understand in background. In spite of these horrendous problems the domestic steel industry is having, on a world basis if you study the profitability of the steel industry you will find that the domestic steel industry is among the most profitable in the world. Indeed, it is more profitable than most of its competitors.

Attached to my testimony you will find a statement which covers the years 1975 through 1981. It is taken from the Fortune industrial 500. It lists country by country, company by company, the return on assets. You will find the domestic industry listed on there, too. If you will compare them, you will find that this problem of profitability in steel is not a U.S. problem, it is a world problem. Those that are marked in yellow are specialty producers.

There is a fundamental difference. In this country when we do not make a profit, when we cannot attract money in the marketplace, we go into bankruptcy; we go out of business. Our foreign competitors do not have this happen to them. They are able to survive in spite of their poor profitability. Take British steel as a classic example. How do they do it? The answer is clear. In many instances they are just outright owned by their government. Indeed, in our specialty cases now pending, it is our view that 60 percent of the competition against which we are complaining is coming from government-owned steel facilities.

The documentation of the subsidies that exist in the world steel industry has never been clearer than it is in the cases that are on file today. All that information is available to you.

Just one comment, in the carbon steel case in which we are a party, we contend that over a 6-year period the companies against which we are complaining received subsidies of $30 billion. During the same period of time they lost $20 billion. Now, if market economics were in place, we would not be filing these cases. I would not be here testifying. These companies simply would not be in business.

Why don't our trade laws work? We have had them on the books for a long time. I believe the history of the steel industry can point out some of the deficiencies. We have had all sorts of concocted remedies that try to get around the trade laws because they simply were not effective. You had voluntary restraints back in the sixties. In the seventies you had the Solomon report, Tripartite Committee, trigger price mechanisms, surge mechanisms, all sorts of things to try to solve the problem.

The fundamental problem in our trade laws is that you must proceed product by product, country by country. It just creates an in-

surmountable burden of trying to get at the point. It is sort of like going out to shoot birds and being armed with a rifle; you have to pick them off one at a time.

Perhaps the thing you get more specifically than anything else in our trade laws as they exist today is that, even after you win really nothing happens. Our Government will get assurances from the foreign party that they will cease and desist what they are doing. Even when duties are imposed, frequently they are not collected. You have the history of the TV cases.

In point of fact, dumping into the United States is a riskless procedure. The foreign country reaps the benefits that they have in their own political and social objectives. Then, if they are actually found guilty, in the end the most that happens to them is they are told to stop doing what they have done.

The unfair trade laws were designed only to deal with a few specific incidences, not a massive kind of problem that we have been faced with in steel.

Let me deal specifically with your amendments, and I am very much in favor of them. First, I remind you that the last administration had two quotes that I think are important. One, President Carter acknowledged that the lack of enforcement of our trade laws had been a derogation of duty. Then the statement was made early on, "If it ain't broke don't fix it." Well, I think the trade laws do need fixing, and something needs to be done.

As you know, this law that you are dealing with has been around for over 65 years. As I understand it, there have only been three cases tried under the act—none successfully. Here is a catch 22; you cannot win. You have got to show malicious intent, and this has been a burden that no one has been able to overcome in trying to deal with it.

Senator SPECTER. Mr. Knoell, are you close to your conclusion?

Mr. KNOELL. Yes.

Your point of reasonably foreseeable effect, I think, is good. It would reduce the burden of proof, and along with imposition of treble damages would give them an opportunity to contemplate the penalties of predatory trade practices.

Let me just skip through here quickly.

There are two points I would like to make that I think makes it much more effective. One is that, of course, it enables the injured industry to recover some damages. The cost of proceeding and proving these cases is expensive. But, as it stands today, there is nothing that the injured party can collect in either the way of damages or cost.

Finally, and I think perhaps the most important change is it takes it out of the political arena. It takes it out of the executive branch. This has been mentioned earlier. So often the people against whom we are complaining are our political allies, our friends throughout the world, and the interests of state take precedence over the interests of the industry. You get traded off for air bases or some other commodity that we think is more important.

If you move it into the courts, the chips will fall where they may, and you will not have the administration subject to the pressure. If there is nothing you can do about it, if the political influence cannot be exercised, there is no sense twisting arms.

Let me just conclude with one point. That is that I am concerned that in the case of steel, while I do not mean to detract from your efforts because I think we need to deal long term, it is too late to deal with the present situation. We have to deal under the laws that are on the books today. We have many cases now on file. I really believe, after being in this thing for as many years as I have, that there is only one feasible solution to the kind of endemic problem that exists in steel. That is some sort of a legislative restriction on the amount of imports. It preserves a share for our European allies, who are the world's highest cost producers, and everything that has been concocted has that as an objective.

Further, it needs to be a long-term solution because in steel a capital decision made today does not result in facilities for several years and has consequences for decades. We in specialty during the period of the import restraints committed to a lot of capital expenditures. They are now coming on stream. I can tell you that a lot of us are wondering whether we made proper commitments on behalf of our shareholders.

Many people will claim that this is a——

Senator SPECTER. Mr. Knoell, we are going to have to conclude. We have six more witnesses and very little time. So, if you can just finish in the next——

Mr. KNOELL. I will stop right there.

Senator SPECTER. I am sorry to make it so brief but we just have a very, very long list of witnesses. Senator Heflin.

Senator HEFLIN. One question you in effect brought up on a nationalized type of steel industry, is the legislation adequate to take care of a nationalized steel industry in a foreign country?

Mr. KNOELL. Well, you take into account in your evaluation, as I understand it, subsidies. As a result, you would be able to get at the losses that are incurred. It is very difficult when you go into an economy that is operated state basis to determine what the true costs are. Your recommendation that the burden be shifted certainly would be helpful in that area. But it is an overwhelming job to try to figure out what the costs are in a nationalized operation.

Senator HEFLIN. In China you were talking about the textiles. You have got certain requirements dealing in treaties and service of process if it is in an affected government as opposed to a private industry. I do not know whether the legislation is adequate to cover that situation or not.

Mr. LEADERMAN. I think it is.

Senator SPECTER. Gentlemen, thank you very much. I do regret the necessity to move on. Our list of witnesses increased in size very quickly. But we do have your written testimony, and without objection, it will be inserted into the record.

[Prepared statement of W. H. Knoell follows:]

TESTIMONY by W. H. KNOELL
President and CEO, CYCLOPS CORPORATION

Mr. Chairman: I am BILL KNOELL, President and CEO of Cyclops Corporation. In testifying today, I am speaking not only on behalf of Cyclops — a producer of both specialty and carbon steels — but also for the Specialty Steel Industry of the United States. This is an association of 17 domestic producers of stainless and tool steel products.

I have a long-time interest in the subject of these hearings — amending the Antidumping Act of 1916. As a matter of fact, more than five years ago I testified before the Trade Subcommittee of the House Ways and Means Committee urging amendments generally along the lines of those you are now proposing.

Before I address the proposed amendments, let me provide a little background. By every measure, the United States specialty industry is cost competitive, efficient, productive, and technologically advanced. Government studies and testimony of our foreign competitors all affirm this. Indeed, Congress's own Office of Technology Assessment maintained that this country's specialty steel industry could be a significant force in world export markets if international fair trade were a fact and our fair trade laws were vigorously enforced.

But, in spite of its competitive posture, today's situation in specialty steels — as in steel generally — is distressing. The level of imports and its impact on the industry, its employees, and communities is acute. During the current year there have been closings of several specialty facilities:

Bethlehem Steel — tool steels
Crucible's Midland Plant (Colt Industries) —
stainless and alloy steel producer

There is clearly a crisis in steel today. If a real solution to the problem of unfair steel trade is to be found, it must be in the context of a longer view. Thus, the importance of your current deliberations.

The steel trade problem has been going on for two decades. Its roots are deep. Unfortunately, most of the solutions that have been suggested and tried were designed to deal with the crisis of the moment.

Just one more bit of background which is important in gaining a true overview of the situation. In spite of the problems in the United States steel industry — in spite of the number of plant closings and bankruptcies — we are the most profitable steel industry in the world. This is particularly true in specialty. This cannot be readily seen because so often specialty steel production is integrated with and made a part of basic steel statistics. Specialty cannot be isolated.

Each year since 1975 I have been compiling the return on assets of steel companies, country by country, company by company. The financial information is from the annual Fortune magazine report on the international 500. A copy of the schedule is attached to my testimony.

If you were to examine the return on assets of the steel industry throughout the world — and I include Japan — you will find that most of the world's steel industry had deficits or very meager returns on their assets. While the return for the domestic industry has been anemic, on a relative scale we have done far better than our competition throughout the world. The fundamental point is that the steel profitability problem is not one for the United States alone — it is worldwide.

But, there is a fundamental difference. With the competitive marketplace and competitive capital markets in the United States, companies must earn a profit to attract investment or else go out of business. Throughout the rest of the world, the steel industry survives — indeed, adds new facilities and capital investment — when it is less profitable than we.

How do they do it? That answer is clear. In many instances they are outright owned by their governments. In point of fact, we believe that 60% of our competition in specialty steel comes from government-owned facilities. The documentation of these government subsidies has never been clearer than in the massive array of trade cases currently pending under our unfair trade laws. This information is all in the record and available to you.

Just one overall comment: In the carbon cases in which Cyclops is a party, it is contended that over a six-year period the companies against which the cases have been brought received subsidies of $30 billion. And, during the same period of time, the same companies lost $20 billion. If true market economics were in operation, we wouldn't need to be filing the cases. We wouldn't be facing their competition. They would be out of business.

But, why don't our trade laws work? There is a history of cases being filed, and in fact being won, without any meaningful correction of the problem. I believe the steel industry's history points up the deficiency in our current trade laws. Back in the 60s, it was necessary to develop the voluntary restraint agreement; then in the 70s, we had the crisis which resulted in the Solomon Report, trigger price mechanism, Tri-Partite Committee, and surge mechanism. If, indeed, our unfair trade laws were effective, none of these would have had to be concocted.

Perhaps one of the most fundamental problems with our trade laws is the requirement that you must proceed product by product, country by country, company by company, although actually dealing with a massive problem of multiple products and multiple countries. The structure of the laws simply does not fit the circumstances. I believe it can be likened to attempting to shoot birds while armed with a rifle.

Yet another fundamental deficiency in our unfair trade laws is that even after going through the massive preparation of the cases, at tremendous cost, and winning the decision, nothing really happens. First, any duties which are imposed are prospective. Or, our government gets the assurances from the offending nation to cease and desist, and no duties are imposed. Even when duties are imposed, they are not collected. Dumping into the United States is riskless. The foreign country reaps the benefit of the sales and the contribution to their political-social objectives. Then, should they be prosecuted and found guilty, the worst that happens is that they are told to stop! Is it any wonder our laws have not been effective? Is it any wonder we have had to concoct all sorts of ad hoc arrangements?

The unfair trade laws were designed only to deal with the exception case — the occasional, blatant, single country, single product case. They cannot deal with a problem as pervasive and endemic as the situation which has occurred in steel for the past two decades. The United States steel industry has been raped! And, that simile has another extension: As with the victim in a rape case, we frequently become the accused in seeking protection.

Let me now address your proposed amendments to the 1916 Antidumping laws. In doing so, I am reminded of two quotes from

the last Administration. First, President Carter said that the failure of this country to enforce its unfair trade laws had been a derogation of duty. Secondly, there was the early philosophy of, "If it ain't broke, don't fix it!" There IS something wrong with our trade laws, and your suggestion addresses a number of the problems.

As you are all aware, this Act has been on the books for 66 years. It is my understanding there have only been three cases tried under the Act, and none successfully. The Catch 22 is the criminal nature and need for complainant to show malicious intent. That is a burden no one has been able to overcome.

The changes you are urging would seem to go to the heart of the problem. The "reasonably foreseeable effect" would reduce the injured party's burden of proof and, along with imposition of treble damages, should make those who consider engaging in predatory trade practices think twice. This has been effective domestically and it is incredible that foreign perpetrators have been exempt. Perhaps if such a law had been on the books over the years, the steel industry would not find itself in today's crisis situation. Governments throughout the world would have stopped to contemplate these penalties before they poured capital into their steel industries in order to develop "tradable products" which could be shipped to the United States to gain foreign exchange benefits. There would have been some risk involved, and those making decisions would have had to evaluate the benefits vs the risks. As the law exists, that judgment has been easy — there have been no risks.

While a lawyer by education, I will leave to others the decision as to whether it is wise to continue the statute with criminal penalties. I wonder if it might not be more effective if it were limited to civil remedies.

Moving on, I see another important benefit, and that is the recovery of damages for the injuries suffered by the complaining industry. Any sense of justice or equity should permit a party who has proven injury from an unlawful act to be able to recover damages.

But, finally, and perhaps the most important, it takes the administration of unfair trade out of the political arena. Under today's unfair trade laws — even as they have been recently amended and, I believe, improved — so much of the decisionmaking is left to the executive branch of our government. This places them in an intolerable position of being subjected to pressures from those who are often political allies and our friends throughout the world. The interests of an industry are often subordinated to interests of state. Foreign governments know they can apply blackmail via political pressure. If the enforcement of this law were removed from that realm, I believe the burden on the executive branch of our government would be eased. Enforcement of the laws of the land will be in the hands of the courts. If there is nothing which can be done about a problem, then there is no point in twisting arms.

So, as you can see, I am very much in favor of your amendments to the 1916 Act. There are a number of procedural details which some of our lawyers feel might be adjusted. But, I believe that can best be handled in direct interface between them and your staff.

Before concluding, I must say your efforts are too late to deal with the current situation in the specialty steel industry. I in no way mean my following comments to detract from my urging passage of the amendments. They are important, but they deal with the future and we must deal with today's problem under today's

laws. And, I suggest to you that the problem in steel has existed for so long and is so pervasive, that it does not lend itself to solution under the laws now on the books.

Thus, the only feasible solution for the distortion in world steel trade — allowed to grow over these years — is some sort of legislative quantitative restrictions. I believe this is particularly true when for our own political reasons we do not want to foreclose from our markets the highest cost producers -- our European allies. All of the schemes which have been proposed have had as one of their root objectives preserving a share of the market for Europe. Quantitative allocations will do that.

Further, whatever the solution is, it must be long term. Steel is a capital intense, long lead time industry. Capital decisions made today do not result in the installation of facilities for several years and have consequences for the company for decades. Our specialty industry made significant investments during the import restraint program. These dollars have now been spent and the facilities are coming on stream. Many of us are now wondering whether we were right in having made the commitments.

To those who object to the intervention in the marketplace of quantitative restraints, I suggest that in the end they represent the least intervention. They are transparent. Everyone knows what you have done. They are simple and require little by way of a mystique or bureaucracy. In the end, they represent the least intervention, for this country is not going to do without a steel industry. And, if we don't deal with the trade problem, there will have to be direct intervention by way of loans, support, and indeed government ownership. We would then

be joining our foreign competitors in the same game they have played.

This scenario is counterproductive. It rewards the lame ducks. The weakest firms in the industry get the support, which further undermines the still viable producers in the industry. The market certainty that would flow from quantitative restrictions rewards the most efficient firms and requires no direct government interference in management as so often follows financial protection.

So, to those of us who abhor government intervention in the marketplace, I say this road involves the least.

BEST COPY AVAILABLE

Products of one or more Plants or Subsidiaries

EARNINGS PERFORMANCE
MAJOR FOREIGN STEEL COMPANIES
(Millions U.S. Dollars)

7-31-81

	1975			1976			1977			1978			1979			1980		
	Assets	Income	% Ret on Assets	Assets	Income	% Ret on Assets	Assets	Income	% Ret on Assets	Assets	Income	% Ret on Assets	Assets	Income	% Ret on Assets	Assets	Income	% Ret on Assets
JAPAN																		
Nippon Steel	$ 9,480	$ 112	1.2%	$11,625	$ 38.6	0.3%	$12,799	$ 95.2	0.7%	$15,434	$ 56.9	0.4%	$16,413	$243.6	1.5%	$13,794	$496.2	3.6%
Nippon Kokan	5,807	37	0.6	6,026	16.2	0.3	8,353	40.2	0.5	10,305	18.8	0.2	11,375	48.9	.4	9,741	116.2	1.2
Sumitomo Metals Indus	5,585	51	0.9	6,905	23.7	0.3	7,735	24.6	0.3	8,795	18.5	0.2	9,040	85.0	.9	7,678	177.1	2.3
Kawasaki Steel	5,457	34	0.6	5,787	23.0	0.4	6,638	22.3	0.3	7,657	27.9	0.4	8,060	86.7	1.1	6,826	216.6	3.2
Kobe Steel	4,342	11	0.3	5,051	20.4	0.4	5,681	26.9	0.5	6,363	21.1	0.3	5,909	68.0	1.2	5,226	111.8	2.1
Nisshin Steel	1,088	8	0.7	1,216	4.6	0.4	1,446	12.7	0.9	1,795	21.4	1.2	2,068	46.4	2.2	1,821	52.5	2.9
Japan Steel Works	564	7	1.2	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Daido Steel	516	6	1.2	592	3.6	0.6	825	4.6	0.6	1,317	9.4	0.7	1,256	14.8	1.2	1,338	26.2	2.0
GREAT BRITAIN																		
British Steel	6,262	172	2.8	6,248	(541.2)	def	7,318	(164.7)	def	9,118	(797.6)	def	10,791	(600.8)	def	7,415	(3091.2)	def
GKN	2,180	42	1.9	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
FRANCE																		
Pechiney Ugine Kuhlm	5,489	(37)	def	5,479	32.0	0.6	6,062	76.8	1.3	7,218	58.0	0.8	8,168	233.1	2.9	7,533	143.9	1.9
Denain Nord-Est Longwy	-	-	-	6,686	(516.8)	def	5,497	(470.0)	def	-	-	-	-	-	-	-	-	-
Schneider	NA	12	NA	6,732	10.7	0.2	9,327	9.8	0.1	12,754	1.0	-	14,091	2.4	-	14,499	(30.5)	def
Usinor	4,631	(318)	def	-	-	-	-	-	-	-	-	-	7,186	NA	NA	7,515	(297.0)	def
Sacilor	3,222	(311)	def	3,791	(310.9)	def	4,701	(485.3)	def	5,164	(249.1)	def	6,362	(350.5)	def	5,569	(470.0)	def
Vallourec	1,634	49	3.0	-	-	-	-	-	-	2,336	2.5	0.1	2,673	(44.0)	def	2,432	(15.0)	def
Chiers Chatillon Gro	413	1	0.2	849	(55.7)	def	1,556	(156.8)	def	-	-	-	-	-	-	-	-	-
GERMANY																		
August Thyssen-Hutte	4,903	100	2.0	5,647	105.5	1.9	5,723	65.7	1.1	7,020	61.2	0.9	9,933	87.3	.9	9,494	61.6	.7
Mannesmann	3,329	239	7.2	3,779	109.4	2.9	4,162	92.9	2.2	4,642	119.3	2.6	5,336	79.8	1.5	4,890	95.9	2.0
Salzgitter	2,526	7	0.3	2,914	(18.5)	def	3,096	(40.1)	def	3,619	(48.3)	def	4,607	(2.0)	def	4,776	(48.7)	def
Fried Krupp	2,482	(19)	def	2,823	10.0	0.4	NA	NA	NA	4,793	NA	NA	5,247	NA	NA	4,897	33.5	.7
Klockner-Werke	1,034	-	-	1,196	.1	-	1,567	(44.7)	def	1,956	(35.8)	def	2,383	14.5	.6	2,342	(5.5)	def
Stahlwerke Bochling-K	687	(41)	def	780	(36.6)	def	786	(79.7)	def	1,538	(34.9)	def	1,448	(32.8)	def	1,500	4.6	.3
Dillinger Huttenwerke	469	5	1.1	512	3.1	0.6	541	(13.1)	def	626	11.0	1.8	704	10.0	1.4	-	-	-
Stahlwerke Sudwestfal	388	2	0.5	457	.1	-	-	-	-	-	-	-	-	-	-	-	-	-
ITALY																		
Italsider	5,734	(111)	def	5,723	(157.6)	def	6,352	(446.6)	def	7,387	(411.2)	def	7,360	(309.7)	def	7,194	(873.7)	def
Fiat	4,215	-	-	6,159	80.4	1.3	4,597	71.2	1.5	5,706	88.1	1.5	NA	NA	NA	NA	NA	NA
Dalmine	836	15	1.8	872	1.5	0.2	1,087	(41.8)	def	1,673	(73.5)	def	-	-	-	-	-	-
Falck	443	4	0.9	414	1.4	0.3	443	(2.3)	def	557	1.4	0.3	-	-	-	-	-	-
NETHERLANDS																		
ESTEL	3,831	(80)	def	4,572	(26.1)	def	5,234	(169.9)	def	6,002	(133.5)	def	6,733	(86.6)	def	5,760	(245.9)	def
AUSTRALIA																		
Broken Hill Proprietary	3,644	149	4.1	3,694	80.6	2.2	3,864	73.8	1.9	4,073	91.7	2.3	4,470	203.4	4.6	5,687	245.4	4.3
John Lysaght	614	4	0.7	643	7.4	1.2	-	-	-	728	5.3	0.7	-	-	-	-	-	-
SOUTH AFRICA																		
So. African Iron & Steel Ind.	3,389	(8)	def	3,474	(36.2)	def	3,613	(44.6)	def	3,877	(78.0)	def	3,849	(44.2)	def	4,285	83.9	2.0

Source data: Fortune Magazine, August 1976, 77, 78, 79, 80, and 81.

BEST COPY AVAILABLE

Products of one or more Plants or Subsidiaries

EARNINGS PERFORMANCE
MAJOR FOREIGN STEEL COMPANIES
(Millions U.S. Dollars)

7-31-81

	1975			1976			1977			1978			1979			1980		
	Assets	Income	% Ret on Assets	Assets	Income	% Ret on Assets	Assets	Income	% Ret on Assets	Assets	Income	% Ret on Assets	Assets	Income	% Ret on Assets	Assets	Income	% Ret on Assets
AUSTRIA																		
VOEST-Alpine	$ 2,738	$ NA	NA %	$ 3,434	$ NA	NA %	$ 4,152	$ NA	NA %	$ 5,078	$(23.9)	def%	$ 5,095	$(29.1)	def%	$ 5,635	$(65.0)	def%
SPAIN																		
ENSIDESA	2,259	(13)	def	2,253	(10.0)	def	2,277	(144.7)	def	2,825	(159.8)	def	3,399	(84.3)	def	3,554	218.3	6.1
Altos Hornos de Vizcaya	1,929	22	1.1	966	10.5	1.1	1,224	(57.0)	def	1,198	(93.2)	def	1,597	(160.3)	def	-	-	-
BELGIUM																		
Cockerill	1,555	(107)	def	1,900	49.8	3.8	1,990	(202.7)	def	3,863	(227.6)	def	3,925	(122.4)	def	3,470	(269.6)	def
Boheart Group	389	6	1.5	457	15.5	3.4	507	16.1	3.2	640	34.6	5.4	738	24.0	3.3	671	10.0	def
Metallurgique Hainaut-Quest	381	(19)	def	-	-	-	-	-	-	1,023	(89.9)	def	2,084	(46.2)	def	1,703	(139.3)	def
Sidmar	-	-	-	-	-	-	908	(30.6)	def	1,003	1.0	0.1	1,105	24.5	2.2	1,014	.4	-
SOUTH KOREA																		
Pohang Iron & Steel	-	-	-	-	-	-	1,883	28.4	1.5	2,840	45.3	1.6	3,250	53.7	1.7	3,523	17.7	.5
KISCO (formerly ICC)	-	-	-	-	-	-				838	13.1	1.6	1,015	16.3	1.6	944	(12.5)	def
SWEDEN																		
Granges	1,342	11	0.7	1,788	(32.6)	def	1,376	(111.9)	def	1,494	(18.4)	def	1,653	(17.7)	def	-	-	-
Sandvik Group	1,055	20	1.9	1,363	17.4	1.3	1,559	46.3	3.0	1,838	24.0	1.3	2,160	40.4	1.9	2,426	45.2	1.9
Stora Kopparberge Bergslags	886	18	2.0	1,323	14.2	1.1	1,216	17.1	1.4	1,239	13.5	1.1	1,565	18.9	1.2	1,630	28.5	1.8
Uddeholm	653	10	1.5	964	6.2	0.6	1,117	15.2	1.4	-	-	-	1,086	(22.0)	def	1,016	(1.6)	def
SSAB (Svenskt Stal)	-	-	-	-	-	-	-	-	-	1,388	(10.5)	def	1,724	(6.9)	def	1,953	(35.0)	def
Uddeva	-	-	-	-	-	-	-	-	-	1,034	5.3	0.5	1,141	7.0	.6	1,147	27.1	2.4
BRAZIL																		
Siderurgica Nacional	1,369	31	2.3	1,642	2.7	0.2	1,758	16.9	1.0	2,296	4.8	0.2	2,227	(87.7)	def	3,012	10.9	.4
USIMINAS	-	-	-	-	-	-	1,356	22.0	1.6	1,959	25.8	1.3	1,679	(98.9)	def	1,982	9.4	.5
LUXEMBOURG																		
ARBED	1,365	(82)	def	1,537	(34.7)	def	1,710	(125.7)	def	2,390	(61.1)	def	2,564	(7.4)	def	2,334	(54.1)	def
INDIA																		
Steel Authority of India	1,214	49	4.0	3,610	36.1	1.0	3,767	85.7	2.3	3,671	39.8	1.1	4,051	20.6	.5	5,580	38.3	.7
SWITZERLAND																		
George Fischer	271	0.5	0.2	612	7.2	1.2	707	8.4	1.2	848	(4.5)	def	993	7.2	.7	962	9.6	1.0
VENEZUELA																		
Sidor	-	-	-	2,390	18.5	0.8	-	-	-	4,595	.9	-	-	-	-	-	-	-
MEXICO																		
Grupo Industrial Alfa	-	-	-	826	51.4	6.2	1,061	43.0	4.1	1,499	71.9	4.8	2,317	118.6	5.1	3,918	143.9	3.7
Altos Hornos de Mexico	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2,304	22.2	1.0
KUWAIT																		
KS Group (Kikuw-Spigarta Pipe)	-	-	-	-	-	-	-	-	-	603	1.1	0.2	688	12.6	1.8	-	-	-

Source data: *Fortune Magazine, August 1976, 77, 78, 79, 80, and 81.*

DOMESTIC STEEL INDUSTRY	30,420	1,395	5.2	33,364	1,337	4.0	35,417	407*	1.2*	38,360	1,277	3.3	40,189	1,155	2.9	42,849	1,632	3.8

Source data: *AISI Statistical Report* *Excludes estimated non-recurring loss of $886.

Senator SPECTER. We are very grateful to you for testifying. Each one of you gentlemen could easily occupy an hour and a half by yourself. We do apologize for the lack of opportunity to have an exchange, which we would greatly appreciate, but this is really the best we can do while giving as broad a spectrum of individuls as possible an opportunity to testify. We feel that returning for the afternoon will not be successful, because we will be in session on the emergency supplemental bill. Thank you very much.

I next would like to call the panel of public officials: Commissioner Edward Paluso, Washington County, Pa.; Mayor Martin Schulte, Midland, Pa.; Commissioner Chriss Doss, Jefferson County, Birmingham, Ala.; and Mayor Steven Means, Gadsden, Ala.

Welcome. It is a pleasure to see Commissioner Paluso here today. We will begin with you.

STATEMENTS OF EDWARD M. PALUSO, COUNTY COMMISSIONER, WASHINGTON COUNTY, PA.; HON. MARTIN SCHULTE, MAYOR, MIDLAND, PA.; HON. STEVEN MEANS, MAYOR, GADSDEN, ALA.; AND CHRISS DOSS, JEFFERSON COUNTY COMMISSIONER, BIRMINGHAM, ALA.

Mr. PALUSO. Thank you, Senator. I would like to thank the Judiciary Committee, specifically you, Senator Specter, for the opportunity to appear here today in support of Senate bill 2167.

I am a graduate of the U.S. Naval Academy. I represented Washington County as the county commissioner for the past 10 years. I am an ex-steelworker for the Wheeling-Pittsburgh Steel Corp.

Washington County is located in the southwestern corner of the Commonwealth of Pennsylvania, south of Metropolitan Pittsburgh, adjacent to the West Virginia border. Unlike many of your constituencies, Washington County's economy is almost totally dependent on the basic steel industry for survival. For this reason I have attempted to restrict my comments to the effect of S. 2167 on the steel industry in general and the economy of my area in particular. Although Washington County has supported industrial development effort in Washington County for the past 10 years to the tune of $220 million to try to obtain a diversity of industry to help our employment situation, still our lifestyle and economy is 75 percent dictated and dependent on the basic steel industry. Historically, our wage earners are the first out and the last in when the economy turns down. Unemployment in Washington County and Monongahela Valley area not only leads the general trend during economic downturn but invariably exceeds the State and national averages by several percentage points.

It would be redundant to dwell on the many factors affecting our economy and the steel industry at this time. Indeed, we are here today to seek a partial solution to just one of many factors affecting our industrial base. The fact that domestic steel production dropped by 29 percent in the first quarter of 1982 while imports from Europe increased by 35 percent, while the whole free world struggled through the same economic downturn, should indicate to all of us that something beside free trade and the marketplace are entering the price equation for steel in the United States.

98-252 O - 83 - 6

I believe that Senator Specter's bill addresses the problem of this missing factor in the equation. It will enable any industry to make a timely inquiry through the courts to try to obtain relief from this situation. It is my opinion and that of many of us close to the steel industry that the type of timely action envisioned by this legislation will show that the missing factor of this equation and price is the dumping of the steel in this country by foreign producers. While our domestic steel industry has maintained a small profit over the past 6 years, these same foreign producers have run up a staggering $20 billion deficit. It is obvious to all of us that without Government subsidies, foreign producers would not be able to sell steel in the American market.

Losses of this magnitude would be fatal to our domestic steel industry. In fact, we have lost 40 steel plants and facilities since 1974 in these United States. Yet, at the same time, European steel companies have been exporting cutrate steel to our country. The low prices for this steel are not set by the world's most efficient plants but by steelmakers dependent on governmental support for existence. American steelmakers operating under our competitive system can never defend themselves against price-cutting competition from a foreign government. Our industry can never expect to become efficient enough to compete with the financial resources of a foreign nation. If our Government fails to insure that the steel industry can compete fairly and openly with other world producers, we will see a continued erosion of our basic industry and the subsequent continuing decline of our economy.

I would like to quote a few figures for your consumption, Senator. During the first quarter of this year, Wheeling-Pittsburgh Steel Corp. shipped 371,000 tons of steel. That is 36 percent below last year's first-quarter figure, the lowest level in the history of Wheeling-Pittsburgh Steel Corp. The present order backlog indicates the second quarter will be no better.

During the week of May 16 we will have 1,500 employees on layoff at the Allenport works of Pittsburgh Steel and 1,500 on layoff at the Monessen works. This is a total of 3,000 laid-off employees from a total work force of 5,000, 60-percent layoff. Corporation wide for Wheeling-Pittsburgh Steel, we will have 6,000 out of 11,500, over 50 percent.

To summarize the need for this bill and similar legislation as proposed by Senator Heflin, let me point out that unfairly traded imports rob our domestic plants of shipments, undercut fair market prices, and raise local production costs by lowering the operating rates of the mills. The result is massive unemployment or the loss of earnings and cash flow, stifling private investment for modernization.

The fact is that our steel industry is a fundamental part of our economy.

Furthermore, the decline of this industry that has been the backbone of this country in its major military struggles must be viewed with apprehension by those of us who fear dependence on foreign steel or oil for our national defense.

In conclusion, I would urge the distinguished members of this committee to support legislation to help us get our basic steel industry through this crisis. Thank you very much.

Senator SPECTER. Thank you very much, Commissioner Paluso. Our next witness will be Commissioner Chriss Doss of Birmingham, Ala. Senator Denton has an introductory comment to make at this time.

Senator DENTON. Thank you, Mr. Chairman—go ahead, Senator Heflin. You are senior to me, sir.

Senator HEFLIN. No, go ahead.

Senator SPECTER. There was no inference that Senator Heflin did not. When Senator Denton came in and asked for an opportunity, I leaned over to Senator Heflin and said: "Jerry wants to go next, is that all right?"

Senator DENTON. I believe it should be made clear, as I tried to do through Senator Specter, Senator Heflin, I would prefer that you speak first. I just arrived.

Senator HEFLIN. Go ahead. Don't worry about that. Go ahead.

Senator DENTON. Mr. Chairman, I want to commend you for holding this hearing on S. 2517, the Unfair Foreign Competition Act. I also welcome the opportunity to greet, along with Senator Heflin, Chriss Doss, president of the Jefferson County Commission; and Steve Means, mayor of Gadsden, Ala. I know these gentlemen will make a major contribution to the hearing by describing the economic hardship caused to local communities by the sudden closing of such major industrial facilities as our Alabama steel plants and the related plants which exist in Gadsden.

The subject of the hearing is important not only to the steel industry but also to other domestic industries. I believe that Congress must review all possible approaches to alleviating the unfair difficulties caused for American industry by foreign subsidizing and dumping of goods in U.S. markets. I will carefully review the testimony given today.

I have been interested in this subject for the past 8 years. While I was in the military, I was involved in examining the consequences of dumping. Trying to ascertain, along with those who are the experts, whether dumping does exist, I am confident that we are going to find out through the International Trade Commission that indeed it does. Remedial steps are going to have to be taken immediately.

I am only sorry that the previous administration did not address this subject more effectively and promptly.

I say that about dumping while at the same time acknowledging that I am an advocate of free trade. World War I and, to a degree, World War II were caused by tariffs. There have been a number of other wars caused by tariffs. Consumers suffer from tariffs. But there are times, when there is a ripoff, in which tariff and other measures are necessary. I believe that free trade benefits industry and consumers alike by creating competition that compels industry to be efficient and sell its products to consumers at the lowest competitive price. Along with that, however, all producers and their governments have the responsibility to avoid using unfair practices such as dumping or subsidies designed to gain unfair advantage and destroy the free market system. Current economic data suggest that such unfair trade practices are now affecting our steel industry.

The quantity of steel products imported into the United States has dramatically increased in the past few years. The total import share of the U.S. market, which average 15.4 percent for the 1970 to 1980 period as a whole, increased to 16.3 percent in 1980 to 19.1 percent in 1981. And today it is approximately 20 percent.

Of course, these figures themselves do not prove that foreign producers are dumping to increase their market shares. The Department of Commerce and the International Trade Commission have concluded, however, that there is sufficient data to warrant further investigation and consideration of the possible imposition of countervailing and dumping duties against foreign steel producers who can be shown to violate the rules of free trade.

By 1977, almost one-quarter of the non-American free world steel capacity was owned by governments. In few nations, other than the United States, was the steel industry independent of some form of government subsidy. As the world demand for steel increased, government subsidies increased as other nations attempted to preserve the position of their own industry. Subsidies have taken various forms, ranging from free or below-market loans to the cancellation of loan obligations. The pending steel cases are based on allegations that some foreign producers have dumped steel products in the United States at 15 percent to 60 percent below fair market value. The complaints also contain allegations that European steel companies have received $30 billion in government subsidies during the past 6 years and will receive another $30 billion during the next 4 years. Mr. Chairman, that is not free trade.

As you probably know, the general practice appearing now seems to be that those governments are willing to make a sacrifice to subsidize for enough years to gain the market in the United States, putting our steel companies out of business incrementally. Then at some point in the future, they would simply, having the market, having the control of the market, start raising the prices to recoup their original subsidy. Now, that is a ripoff not only to our steel industry but to our consumers and to the economy of the United States, if that is the case. And it appears that it is.

Such practices have had a major detrimental effect on our domestic steel industry. Since the beginning of 1981, over 77,000 steelworkers have been laid off. This affects many States. It has a particularly severe effect on my State. Recently, United States Steel announced that it will close one of its largest plants in Fairfield, Ala. The closing of the Fairfield plant will involve the layoff of 3,200 workers, striking another major blow to the intolerable unemployment in the State of Alabama. Other States have similar problems.

The current flood of cheap foreign steel will also have a negative effect on the domestic industry's long-range plans to invest over $6 billion in capital investment. In January 1982, seven domestic steel companies filed over 100 antidumping and countervailing duty cases against steel producers in eleven foreign nations. The Department of Commerce is currently conducting 55 investigations involving over 90 percent of the imports covered by the petitions.

My appearance here today is not a gesture. I have had lengthy discussions on the steel import issue with Lionel Ulmer, Under Secretary of Commerce for International Trade. I am confident, from

what I know of their data, that the Department of Commerce will rule in favor of the domestic producers. I am pleased that Secretary Baldrige announced on May 12 that he may impose retroactive duties on foreign steel producers found to have flooded U.S. markets with cheap subsidized steel. I am optimistic about the preliminary decision which the Department of Commerce will announce on June 10. I believe the Secretary's announcement clearly demonstrates that the Reagan administration is committed to enforcing our trade laws. As I say, I think that is a little belated. I think the previous administration should have done something about it. It is unfortunate that the previous administration did not enforce those trade laws as actively and that the situation has been allowed to deteriorate so badly.

The tragedy to me is that here President Reagan and Congress have for the first time brought our steel industry, in fact, our industries in general, into competition in terms of the tax depreciation allowances which the other governments have afforded their industries for decades. You read in some of the liberal media that there are no more breaks that we can give to our businesses in taxes. That is simply not true. We are beginning to be competitive in those terms now. Only in July of this year will those moneys be in the pockets of those who wish to take advantage of the modernization and so forth. Keep in mind in that context that the United States assisted West Germany, France, England, Japan to establish what amounts to a brand-new industrial base in the fifties, sixties, and seventies. Ours goes back, if you go up to Pittsburgh or to Birmingham or to Detroit, to 1920, in most cases. In spite of that, we have remained reasonably competitive.

Now at the birth, this summer, of greater competitiveness, achieved through the tax depreciation allowances, we are facing these closures.

It is a tragedy that we had to lay off 3,200 people when we are just on the verge of being able to catch up and become viable.

I realize that I have not looked into this particular proposal nearly as much as the gentlemen, my colleagues on my left. I recognize that the administration has taken fast action in the terms I have noted. But I also agree that we must look at the possibilities for legislative as well as administrative remedies for this unfortunate situation. I again congratulate the chairman for his initiative and wish to welcome my Alabama friends to Washington.

Senator SPECTER. Thank you, Senator Denton. Senator Heflin.

Senator HEFLIN. I had an opening statement. I merely wanted to give you just a little background on the two Alabamians that will testify. Commissioner Doss is the chairman of the Jefferson County Commission. This is the county in which Birmingham and Fairfield are located. He is a lawyer, a librarian, a historian, and an ordained Baptist minister. He is married to a physician. So, he has a wide variety of experience. I might say at one time he did some missionary work in Pennsylvania when he was a professor of history and a librarian at East Baptist College at St. Davids, Pa.

Senator SPECTER. This might be a good occasion for my introduction.

Senator HEFLIN. Steve Means, who is the mayor of Gadsden, was probably the youngest mayor elected in the State of Alabama. He

was certainly the youngest in the history of Gadsden. He is the chairman of the legislative committee of the Alabama League of Municipalities. He was selected as one of the four outstanding young men of Alabama and has done a great job as mayor. Both of these gentlemen are from cities and counties in which steel is important. Mayor Means also has a lot of rubber industry in his county, and that industry has been affected by imports in a lot of different ways, particularly the effect on the automobile industry.

I think these two gentlemen come from two areas that have been affected by dumping and know the problems of foreign imports.

Senator SPECTER. Commissioner Doss, we welcome you here. It seems most inappropriate, nonetheless necessary, to turn on the green light, which signals 5 minutes, for a man of your extraordinary talents and background. But we welcome you and look forward to your testimony.

Mr. Doss. Mr. Chairman and other members of the Senate Judiciary Committee, I am genuinely appreciative for your allowing me to testify concerning a subject which is extremely vital to the American people, including the nearly 700,000 persons of Jefferson County, Ala., whom I have the honor to represent. The problems and threats of dumping foreign steel in the United States are real. They are playing havoc with domestic steel industry. I applaud your endeavor and effort in your studies of Senate bills 2167 and 2517 and sincerely hope that Congress will take positive action.

I would like to concentrate my remarks primarily on the impact that foreign steel imports are having in the general area of Alabama that I represent. For almost a hundred years Jefferson County, Birmingham, Ala., has had steelmaking as one of its principal industries. Birmingham is frequently referred to as the Pittsburgh of the South. Historically, a high percentage of steel needs in the Southeastern area of the Nation have been met by United States Steel's furnaces and mills in the Birmingham area at the Fairfield and Ensley plants.

About 2½ years ago, there were almost 8,500 men and women working in these local plants. During this time, the number of employees has continued to erode. The Ensley plant was closed about 18 months ago. As of last Friday, May 21, 1982, United States Steel announced that by early June of 1982 its Fairfield plant would be closed with no prospects of opening again until early 1984 and only then would employ about 2,000 employees.

The loss of these jobs is serious. The weight of the loss is most fully appreciated when one is aware of the fact that there is presently a 13-percent unemployment rate in the area.

Although one cannot honestly represent that dumping is the sole factor causing the sad plight of the steel industry, it is definitely one of the major factors. Until this problem is seriously addressed, the woes of the steel industry will not be resolved. This is attested to by several sources. I would like to make mention of just a few.

On April 3, 1982, at the United States Steel's 81st annual stockholders' meeting in New Orleans, Mr. David M. Roderick, chief executive officer and chairman of United States Steel, said, concerning the Fairfield plant: "Until intolerable trade practices are curbed by strict trade law enforcement, we are forced to react to the present crisis with reduced operations."

On the same occasion, Mr. Roderick announced that United States Steel was considering shutting down the Fairfield plant, and this became a reality last Friday, May 21. Further, Mr. Roderick stated that a flood of imported steel products through the gulf ports have reduced steelmaking at Fairfield to 33 percent of the plant's 150,000-ton-per-month capacity.

In the same speech of April 3, Mr. Roderick claimed that foreign manufacturers have captured 29 percent of the steel market in the gulf coast area. Mr. Roderick's statement is confirmed by the shipping statistics at the ports of Mobile, New Orleans, and Houston. In Houston, Tex., the astronomical growth of importation of foreign steel is most apparent. In 1980 approximately 3 million tons of foreign steel were shipped through Houston. In 1981 the amount had risen to 5.8 million tons, an increase of 93 percent.

In comparing prices of domestic and foreign steel, one can readily appreciate why manufacturers and fabricators are turning to foreign steel. A few days ago I had a maker of wire fencing tell me that the only way he could remain competitive with other producers was by buying and using foreign wire rods in his operation.

In Birmingham a few days ago I checked with suppliers of different types of steel. In some cases there was as much as $180 difference between a ton of domestic steel and imported steel, with the domestic steel costing the most. It is absolutely clear that the existence of trigger pricing and countervailing duty petitions have not resolved the problem of dumping. There has been a great deal of discussion and debate about these two procedures. It may be that they would have been more effective if there had been employed a more aggressive enforcement. However, it must be recognized that trigger pricing and countervailing duty petitions are procedures which are slow and awkward at best.

Senate bills 2167 and 2517 appear to remedy many of the ills of trigger pricing and countervailing duty petitions. I would like to just say in closing that it provides for action against all offending parties, not just producers of the nation of origin but all parties such as salesmen and middlemen. The degree of penalties is such that it should serve effectively as a genuine deterrent. It allows a wide inclusive basis for people to quality as plaintiffs.

Through the District Court of the United States, temporary and permanent injunction and temporary restraining orders may be obtained to halt importation.

A plaintiff prevailing under this bill can recover threefold the damages sustained, obtain other equitable relief as may be appropriate including the cost of the suit and including reasonable attorney's fees.

With the inclusive authority granted to the district court, wider and quicker relief is afforded the plaintiff. This bill will provide for an adequate remedy to the area of U.S. industry which needs a more effective and expeditious procedure to deal with dumping. Thank you.

Senator SPECTER. Thank you very much, Commissioner Doss. We will insert your statement, without objection.

[Material referred to follows:]

PREPARED STATEMENT OF CHRISS H. DOSS, PRESIDENT
JEFFERSON COUNTY COMMISSION, JEFFERSON COUNTY, ALABAMA

Mr. Chairman and other members of the Senate's Judiciary Committee, I am genuinely appreciative for your allowing me to testify concerning a subject which is extremely vital to the American people, including the nearly 700,000 persons of Jefferson County, Alabama, whom I have the honor to represent.

The problems and threats of dumping of foreign steel in the United States are real, and they are playing havoc with the domestic steel industry. I applaud your endeavor and effort in your study of S. 2167, and I sincerely hope that Congress will enact it.

I would like to concentrate my remarks primarily on the impact that foreign steel imports are having on the general area of Alabama, which I represent. For almost a hundred years Jefferson County (Birmingham), Alabama has had steel making as one of its principal industries. Birmingham has frequently been referred to as the "Pittsburgh of the South." Historically a high percentage of the steel needs in the southeastern area of the Nation have been met by U. S. Steel's furnaces and mills located in the Birmingham area at the Fairfield and Ensley plants.

About two and one half years ago, there were almost 8,500 men and women working at the local plants of U. S. Steel. During this time the number of employees has continued to erode, and the Ensley plant closed about eighteen months ago. And last Friday (May 21, 1982) U. S. Steel announced that by early June of 1982 its Fairfield plant would be closed with no prospects of opening again until early 1984, and then with only about 2000 employees, which would probably be the greatest number that would be on the payroll at any one time. The loss of these jobs is serious and the weight of the loss is more fully appreciated when one is aware that there is already a 13 percent unemployment rate in the area.

Although one cannot honestly represent that dumping is the sole factor causing the sad plight of the steel industry, it is definitely one of the major factors, and until this problem is seriously addressed the woes of the steel industry will not be resolved. This is attested to by several sources. I would like to refer to just a few:

1. On April 3, 1982, at the United States Steel's 81st annual stockholders' meeting in New Orleans, Mr. David M. Roderick, chief executive officer and chairman of United States Steel said, concerning the Fairfield plant, "Until intolerable trade practices are curbed by strict trade law enforcement and until the steel market rebounds, we are forced to react to the present crisis with reduced operations."

On the same occasion, Mr. Roderick announced that U. S. Steel was considering shutting down the Fairfield (Jefferson County) plant. As of last Friday, May 21st, what was being considered became a reality. Further, Mr. Roderick stated that a flood of imported steel products through the Gulf ports have reduced steelmaking at Fairfield to 33 percent of the plant's 150,000 ton-per-month capacity. According to "Steel Foreign trade Data, "dated April 28, 1982, 40.3 percent of steel imported into the United States comes through the Gulf Coast.

2. In the same speech of April 3rd, Mr. Roderick claimed that foreign manufacturers have captured 29 percent of the steel market in the Gulf Coast area. Mr. Roderick's statement is confirmed by the shipping statistics of the ports at Mobile, New Orleans and Houston. In 1981, 153,255 tons of foreign steel were imported through the port at Mobile. This was a 72 percent increase over the 89,034 tons shipped in 1980. In the Port of New Orleans, in 1980, approximately 2 million tons of foreign steel were imported. The foreign shipment in 1981 was 2.4 million tons, or a 24.2 percent increase. In Houston, Texas the situation was even graver; in 1980 3.0 million tons were shipped, but in 1981 the amount had risen to 5.8 million tons, or an increase of 93 percent.

While the figures of imported steel were rising at a rapid rate, an opposite trend was occurring at the Fairfield plant. Between 1980 and

1981, there was a 13.8 percent decline in production; between 1980 and 1982 (figures based on first three months of 1982), there was a 39.6 percent drop in production. Of course the final situation is the traumatic closing of the entire plant with no production.

3. On comparing prices of domestic and foreign steel, one can readily appreciate why manufactors and fabricators are turning to foreign steel. A few days ago, I had a maker of wire fencing tell me that the only way he could remain competitive with other producers was by buying and using foreign wire rods in his operation.

4. In Birmingham a few days ago, I checked with a supplier of different types of steel and learned the following. Hot rolled plates of domestic steel book price was $530.00 per ton; the same unit and quality of imported steel was $400.00 a difference of $130 per ton. For structural steel the domestic book cost was $560.00 per ton; the imported was $380.00 per ton a difference of $180.00 per ton. On hot rolled sheets the book listing per ton for domestic steel was $435.00 and imported steel sheets were $340.00 per ton for a difference of $95.00. It should be pointed out that in most cases, the price of domestic steel is now negotiated; which makes the difference less, but the negotiated price is still higher than that of foreign steel.

The condition of the steel industry, an industry which has contributed substantially to our Nation's greatness, is deplorable. However, the present plight has been many years in the making. I agree with President Lloyd McBride of the United Steelworkers of America, who stated on April 26, 1982 before the Subcommittee on Oversight and Investigations, Committee on Energy and Commerce, U. S. House of Representatives, that he did "..not believe there is another domestic industry that has been as thoroughly studied in the past five years as the steel industry." In spite of such vigorous activity the situation remains keenly bleak. The passage of S. 2167 or similar legislation is badly needed.

It is absolutely clear that the existence of trigger pricing and countervailing duties petitions have not resolved the problems of dumping.

There has been a great deal of discussion and debating about these two procedures. It may be that they would be a great deal more effective if they had been employed in a more aggressive enforcement, however, it must be recognized that trigger pricing and countervailing duties petitions are procedures which are slow and awkward at best. According to the Pittsburg's "Post-Gazette" dated Friday, February 19, 1982 the petitions, filed by seven U. S. companies in trigger pricing cases, required "494 boxes containing an estimated three million pages of documents." Even with such voluminous supports under the present laws the cost is difficult to ascertain. True cost must accurately reflect cost of manufacturing, cost of shipping or transportation and cost of marketing. Under trigger pricing there are some substantial loopholes. Such means as dummy companies and tailored claims can be used to get around the protection of trigger pricing. S. 2167 appears to remedy most of the ills of trigger pricing and countervailing duties petitions. Some of the appealing aspects of S. 2167 are as follows:

1) It provides for action against all offending parties, not just the producers or the nation of origin, but all parties such as a salesman or middleman.

2) The degree of penalties is such that they should serve effectively as a genuine deterrent. Experts in the steel industry claim if the penalties are to be effective they must be big enough to out weigh the profits.

3) It allows a wide and inclusive basis as to who can be a plaintiff - "any person who has been injured in his business or property by reason of any violation of, or conspiracy to violate this section."

4) Through the District Court of the United States, temporary and permanent injunction or temporary restraining orders may be obtained.

5) A plaintiff prevailing under this bill can "recover threefold the damages sustained, any other equitable relief

as may be appropriate and the cost of the suit, including reasonable attorney fees.

With the inclusive authority granted to the District Court, wider and quicker relief is afforded the plaintiff. This bill will provide for an adequate remedy to an area of U. S. industry which needs a more effective and expeditious procedure to cope with dumping.

There are those who support the position that the steel industry in the United States should not be given any governmental protection. Such posture would be in order if all steel manufacturers were operating under the same system and set of dynamics. However, it must be recognized that the steel industry is now an international industry. When other countries subsidize their steel industries to encourage them, the government of the United States must take those steps to fairly and equitably protect its domestic steel industry.

Mr. Chairman, thank you!

Senator SPECTER. We will now turn to the mayors. We will start with Mayor Schulte.

Mr. SCHULTE. Thank you. I wish to thank you for giving me this opportunity to testify on behalf of S. 2167 and to explain to you the devastating effect that closing of the Crucible Steel Co. will have in Midland, Pa. The policy of the U.S. Government today is one of encouragement of free trade. Historically and philosophically, there is sound basis in the theory of free trade under our present economic system. We must be willing to take our chances in a competitive environment. We are not here to argue against the case of free trade.

We do not desire a policy of protectionism, quotas, or tariffs. What we seek is a practice of craftmaking that is steel on an equal footing with all of our competitors. However, at the present, U.S. steelmakers are placing their products in the open market in competition with steel which has been subsidized by England at $533 a ton; France, $300 a ton; Italy, $290 a ton; Belgium, $178; and West Germany, $120.

In order to achieve this selling in the United States, they are dumping their surplus on our market. Import penetration is up sharply since 1981, up by 1,359 percent from Great Britain, 115 percent from France. It was during this particular period of time that Crucible Steel's Midland plant went from a profitmaking entity to one which began to lose money.

I would like to deal specifically with how this has affected the community that I represent.

In the past year there have been 38 plants in Beaver County, Pa. that have closed. At present many plants are operating at low levels of capacity. St. Joe Lead is operating at 30 percent capacity. Weirton Steel has 10,000 jobs laid off. Jones & Laughlin have laid off thousands of people, and this is continuing weekly. Local refractories and pottery companies have announced layoffs and closures. Crucible Steel in Midland will be shut down at the end of the year if there is no buyer. Just in yesterday's paper, Armco has a temporary shutdown of 3 weeks with an opening date of uncertainty.

In 1979 Crucible employed 5,340 people. In 1980, it was 4,550. Last week 1,100 people worked in that mill. That is a loss of over 4,000 jobs. If there is no buyer by the end of this year, there will be no Crucible Steel. There will be a loss of 5,340 jobs in Midland. This will create a tremendous ripple effect in the entire tristate area of Pennsylvania, Ohio, and West Virginia. In 1981 the payroll in Midland was $160 million. In 1981 Crucible Steel spent $60 million in the Midland area, the western Pennsylvania area on local purchases. The borough of Midland collects a wage tax which finances the borough of Midland $720,000 in the 1982 budget. That is approximately $62,000 a month. If we have a shutdown, which is expected shortly, our borough will collect approximately $8,000 in taxes. We will not be able to pay our utility bills. We will not be able to pay our payroll, our police, our fire protection, trash collection, or anything of that nature. We will be absolutely bankrupt beginning with June 1.

This extends to the tristate area. East Liverpool, Ohio, will lose 1,744 jobs permanently; 51 percent of their budget will be gone. Wellsville, Ohio, 473 jobs. Chester, W. Va., 230 jobs. This is devastation to our tristate area. In addition to this, we depend upon Crucible for our water supply. We will have to drill new wells and find another source of water, which will cost us approximately $60,000 a month unless we get some kind of activity from the county government.

Our local school board will also be hit. We have just recently lost a quarter of a million dollars on a tax appeal case to Crucible Steel.

We just had a tax increase of 50 percent in Beaver County. This is going to hurt the elderly people considerably. Our water bills will go up because of the closing of Crucible. Peoples Natural Gas has already indicated a desire to raise rates due to the loss of revenue from Crucible. We are going to have to charge our people for trash collection. The elderly on fixed incomes, the young people who just bought houses in the last 5 or 6 years, will have nowhere, to go because there are no jobs in Beaver County.

What we are asking——

Senator SPECTER. Mayor, I am sorry to interrupt you, but I really must. I am going to have to be on the floor by 1:15. We have gone much longer than I had anticipated. If you could just finish up now.

Mr. SCHULTE. That is what I am doing right now, thank you.

We are asking for you to support from committee a bill, 2167. This mechanism should be able to operate swiftly. Thank you very much.

Senator SPECTER. Thank you very much, Mayor Schulte.

Now we will call on Mayor Steven Means of Gadsden, Ala.

Mr. MEANS. Distinguished members of the Senate Judiciary Committee, in the interest of time I will forgo the usual formal greetings except to say that I am honored to represent the people of Gadsden, Ala., and particularly the more than 4,000 local steelworkers before this distinguished body.

I come from the Queen City of the Coosa Valley, a beautiful city of 50,000 people nestled in the foothills of the Appalachian mountains. Gadsden is the home of Republic Steel's southern division plant and the largest radial tire producing plant in the world, Goodyear Tire & Rubber Co. We are a highly industrialized city and we are proud of it. The thousands of men and women who work in our factories and mills are the backbone of our community and the economic foundation for our city. When the steel industry suffers, it has a tidal wave effect, causing problems in other industries and businesses. Surely, when the steel industry suffers, so suffers the city of Gadsden. And, gentlemen, the steel industry is suffering.

When addressing an issue of national importance such as the dumping of foreign steel in the United States, I am reminded that each member of this committee is our representative of Gadsden, Ala., also; you are not just representing your own home State but also our people in Gadsden. It is nice to know that, in addition to our own fine Senators, Mr. Heflin and Mr. Denton, we in Gadsden have you gentlemen also representing our best interests.

I am here today to support Senate bill 2167 introduced by the distinguished Senator from Pennsylvania, Senator Arlen Specter.

My hometown is referred to as the "City of Champions." Gadsden earned this reputation due to the competitive nature of our people. Youth baseball teams, football teams, local marching bands, and other competitive groups win State and national championships every year. Our list of teams, clubs, organizations, and individuals who have gained national recognition is almost unbelievable. We believe in winning. And that brings me to the thrust of my statement, which is quite brief and quite to the point.

I did not have to come all the way from the Coosa to the Potomac to tell you that the American steel industry and the American steelworkers are suffering because of unfair competition. Foreign countries are dumping steel in the United States that sells for less than our own American workers can produce it. It sells for less only because this production is subsidized by foreign governments. Gentlemen, that is unfair. American steelworkers are hard working, patriotic, and productive people. My folks in Gadsden did not send me up here to ask for any handouts or any sympathy or any Federal aid. They wanted me to come up here and say that, given a fair and equal chance, they can outwork and outproduce any other steelworker in the world.

Gentlemen, we need your help. We need not only this particular bill but we need every ounce of your personal commitment to restore fair competition to the steel industry. Give our steelworkers and steel companies a fair and equal chance, and I know they will reestablish American steel's competitiveness. I know this country will soon experience much needed recovery and progress in the steel industry.

I appreciate your allowing me to testify before you.

Senator SPECTER. Thank you very much, Mayor. We very much appreciate your testimony.

Senator HEFLIN. Mayor Means, what is the unemployment rate today in Gadsden, Ala.

Mr. MEANS. Etowah County has been leading the State, and I would assume quite high up in the Nation, with recorded 30 percent unemployment according to some last figures. Now, I question the accuracy of these particular figures, but nevertheless it lets you know there are too many people unemployed. We have been staying right around 19 percent in the city, which is far too high.

Senator HEFLIN. What is the unemployment in Washington County, Pa.

Mr. PALUSO. The basic steel-producing area of the Monongahela Valley from Homestead to Fredericktown, the unemployment rate is hovering between 25 and 30 percent right now, Senator.

Senator HEFLIN. What about in Midland, Pa.

Mr. SCHULTE. In Midland, Pa., our unemployment rate is probably over 50 percent.

Senator HEFLIN. What is it in Jefferson County?

Mr. DOSS. It is 13 percent.

Senator HEFLIN. I believe our nationwide unemployment rate today is 9.4 percent.

Senator SPECTER. Thank you very much, gentlemen. We very much appreciate your being here. I am sorry again that we do not have more time to carry on a dialog.

Our final panel is composed of Mr. Sandy Sierck and Mr. Richard Cunningham. Gentlemen, I very much regret the shortness of time, but I hope you understand. We are very pleased that you are here today. We will start with Mr. Sierck.

STATEMENTS OF ALEXANDER SIERCK, ATTORNEY, BEVERIDGE & DIAMOND, WASHINGTON, D.C.; AND RICHARD CUNNINGHAM, ATTORNEY, STEPTOE & JOHNSON, WASHINGTON, D.C.

Mr. SIERCK. My name is Alexander Sierck. I am a partner in a Washington law firm, Beveridge & Diamond. I have been involved in private practice and in Government service in the areas of antitrust and international trade.

I would like to keep my remarks down to about 2 or 3 minutes and so will summarize, even more than I intended, my prepared statement. I would like to just touch on a couple of points that really have not been raised by any of the other speakers.

First, there is a potential remedy under the antitrust laws for damages from dumping, although, in my judgment, that remedy is ineffective largely because under the antitrust laws predatory pricing is defined differently in a much more strict standard than under the antidumping laws. In antidumping predatory pricing can include selling below fully allocated cost of production. Under the antitrust laws it is marginal cost, which is a much lower number. So, as a practical matter, the Sherman Act really does not provide a practical remedy. The Robinson-Patman Act, which is the domestic price discrimination law, on its face requires that both the fa-

vored and disfavored sale occur in the United States, and so is thus not applicable to dumping.

Second, in my judgment there is no question that neither the 1916 act nor the antitrust laws provide a viable damage remedy for dumping. But the question that concerns me is whether the law should be changed. There is no question that changing the law has the potential for benefiting the domestic steel industry, but what is uncertain is at what cost to American exporting interests. That is something that I am really no more capable of judging than the next person but I urge your committee to consider it.

I do state with some degree of confidence my intuition that, were the United States to amend the 1916 act to create a viable remedy, the United States would certainly incur comparable legislation arising in other countries or other barriers, other impediments to U.S. export interests.

Third, turning to the question of whether a dumping damage remedy such as the one that you have proposed would be viable, I am concerned that any such remedy would provide the steel industry, for example, with false hope and false security. The pretrial discovery problems on the issue of damages appear to be very significant. I see no realistic prospect of any legislation that foreclosed discovery opportunities withstanding a constitutional challenge.

In sum, even if the committee determines that it makes sense to go forward with an expanded damage remedy, I am not so sure whether as a practical matter the courts are going to enforce that remedy promptly and without significant cost.

At that point I will conclude my remarks.

Senator SPECTER. Thank you very much, Mr. Sierck. Thank you for being so brief and to the point. Mr. Cunningham, we welcome you here and look forward to your testimony.

Mr. CUNNINGHAM. Thank you, Senator Specter. I also will be brief. I have submitted an expanded statement which I hope will be included in the record.

Senator SPECTER. It will be made a part of the record in full, without objection.

Mr. CUNNINGHAM. My name is Richard Cunningham. I am a member of the law firm of Steptoe & Johnson. I have been doing international trade law practice in this town for more than a decade now, representing sometimes importers and sometimes U.S. industries seeking relief.

I am here today to express my own view, which is very strongly that we need a damages remedy for U.S. industries injured by dumping. Unfortunately, I am also here to express my view that this legislation goes further than we need. I greatly fear that this bill might ultimately fail because the charge will be leveled against it that it goes further than is necessary, raises unnecessary diplomatic problems, and conflicts with GATT obligations.

I think I know, after representing an awful lot of foreign exporters, including some in the steel industry, I might add, what gets the attention of a foreign exporter. It is the availability of a remedy in damages. It is a government which says to him, if you sell into the United States, you are not going to have a free first bite; you are not going to be able to ship in here until we gear up a dumping case, which I might say takes a long while to put togeth-

er. Even before you file that case, you have to do work for as much as a year to get the data together. What we need is a law that says to the foreign exporter, we won't wait until you get your 6 months of investigation after a period of a year of putting together a case; we're going to tell you that from the day one when you sell your imports in here at dumped prices you may be subject to a damages remedy.

That is what you need here, Senator. You do not need injunctions. You do not need exclusion orders. You do not even need treble damages or criminal penalties. If you have that, that is enough. It will solve the trade problems, the very genuine trade problems that these industries have come in here and discussed today. But it will give you a bill that will not be subjected to criticisms that I fear you will have with the present legislation.

I would be delighted to work at greater length with your staff when we have more time to talk about that sort of subject. But I really fear that, if you go forward with as much of an overkill as you have here, then a good idea, a necessary idea for U.S. trade policy, may not succeed.

Senator SPECTER. Why not include the injunctive relief as well as damages? You may be right that treble damages are unnecessary. You may be right that the criminal penalties are too extreme, although there is ample discretion not to apply them. But why not at least provide for injunctive relief?

Mr. CUNNINGHAM. I think that is the closest question. I think that it is probably not necessary. I say that because you already have a prospective-looking relief that you get to without too much delay after a proceeding has been filed under the present administrative law. Indeed, you also have—and I see that now we have a government that is willing to use it for the first time—a retroactive withholding remedy under the administrative law.

That, together with the from-the-day-one possibility of damages for imports that entered even before the proceeding was brought seems to me to be fully effective. But I grant you, that is the closest question of the issues that I have concern with.

Senator SPECTER. Gentlemen, we are very grateful to you for coming and for testifying. Your appearance here is not unlike the old story, a twenty-second one, of the speaker who waited until past midnight of the political rally and thanked the one remaining person who was in the audience: thank you very, very much for staying and listening to my speech. The man said: don't thank me, I'm the next speaker.

Mr. CUNNINGHAM. Thank you, Senator.

Senator SPECTER. The hearing is adjourned.

[Whereupon, at 1:15 p.m., the meeting was adjourned.]

[Prepared statement of Richard O. Cunningham follows:]

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STATEMENT OF RICHARD O. CUNNINGHAM

Two years ago, I testified before the International Trade Subcommittee of the Committee on Finance in support of Senator Danforth's effort to revitalize the Antidumping Act of 1916. I still support the need for an effective remedy in damages for U.S. companies and industries injured by the dumping of imported merchandise. Accordingly, I support the concept which underlies S. 2167, introduced by Senator Specter. My first purpose in appearing before you today is to explain the reasons why I feel that the Antidumping Act of 1916 should be revitalized.

However, I feel equally strongly that a number of the provisions in S. 2167 go much too far. Specifically, I feel that the following provisions of the Bill are neither necessary nor sound trade policy, and moreover, raise serious questions as to whether this legislation is consistent with our country's commitments under the General Agreement on Tariffs & Trade.

- imposition of penalties on parties other than the foreign exporter and/or its subsidiaries and affiliates
- treble damages, rather than single damages
- criminal penalties
- court-ordered exclusion of merchandise from entry into the United States
- injunctive relief

My second purpose in testifying today, therefore, is to urge that the Bill be improved by deleting these provisions.

I. The Need For A Remedy In Damages For Unfair Import Pricing

When I testified on this issue in March, 1980, I presented certain examples from the experience of AMF, Inc.*/, demonstrating the inadequacy of the prospective administrative remedy under the Antidumping Act of 1921 in certain important commercial circumstances. The problems arise from the fact that the 1921 Act provides a remedy which is exclusively prospective (except for the oft-threatened but never used

*/ I am not appearing today as counsel for AMF, Inc., nor have I consulted AMF concerning the views which I am stating.

retroactive withholding clause), is not imposed until a number of months into the proceeding, and provides no remedy for harm suffered as a result of imports entered before the withholding of appraisement. Because of these limitations, the 1921 Act is, in my opinion, inadequate to deal with the following commercial problems:

A. The "First Bite From the Apple"

Imposition of antidumping duties under the 1921 Act can occur only after imports have reached a level at which they cause or threaten "material injury" to a U.S. industry. What this means in practice is that a foreign exporter can, through dumping, achieve a commercially signficant position in the U.S. market before any remedy is imposed which may limit further expansion of that position. Many American industries believe that this is a standard tactic of Japanese and other exporters. They initially enter the market at very low, dumped prices. By means of this unfair pricing, they gain a significant participation in the market, but not one which is sufficient to constitute "material injury" under ITC standards. This market share, however, provides them with U.S. market acceptance and a springboard for increasing their U.S. activities to injurious levels. Even where a case is subsequently brought under the 1921 Act, with the result that duties are imposed based upon a finding of material injury, the U.S. industry receives no protection against what may be the most significant adverse commercial effect of the dumping -- the building of the initial base in the U.S. marketplace.

This concept has often been the subject of discussion in international trade circles. It is phrased in terms of "letting the foreign dumper have a free first bite". Traditionally, this discussion has focused on the desirability of retroactive imposition of antidumping duties. I would submit, however, that the real issue is one of damages instead of duties. Duties are inherently prospective and preventive in nature. Damages, by contrast, are remedial and retrospective. Accordingly they are the appropriate remedy for a U.S. industry which has been injured by that "first bite".

B. Sudden Influxes of Imports

The 1921 Act simply does not provide a quick enough response to

deal with a sudden influx of imports. In my 1980 testimony on behalf of AMF I recounted a situation in which a sudden oversupply throughout the world of mopeds produced massive dumping of that product into the United States on a very sudden basis. There was simply no possibility that an antidumping proceeding could be put together and filed, let alone prosecuted to withholding of appraisement, quickly enough to apply the duties to that sudden influx. By the time duties could have been imposed, substantially all of those mopeds were in the United States, sitting in wholesalers' warehouses or in dealers' showrooms.

Not even retroactive withholding would have been useful in that circumstance. It must be remembered in this regard that an antidumping proceeding cannot be filed immediatelv upon becoming aware of an import problem. One must first conduct a difficult and usually time-consuming investigation of pricing and perhaps costs in the foreign market in order to be able to advance the requisite evidence that less than fair value (LTFV) pricing is occurring. This takes anywhere from several months to a year from the time of discovering the existence of the import problem. By that time, it was far too late to catch those mopeds, even with 90-day retroactive withholding of appraisement.

C. "Hit and Run Dumping"

A not uncommon variation of the sudden influx problem is a phenomenon known as "hit and run dumping". We live today in a world of sophisticated companies with multinational sales operations. In many industries, such companies have regular or periodic needs to "dump" a portion of their production to maintain their levels of output at a high percentage of capacity. Yet they are sophisticated enough to know that they will be subject to possible antidumping law enforcement if they consistently sell this excess production in a single country. Accordingly, they engage in "hit and run dumping", with relatively brief bursts of low-priced selling in the United States, then in another country, then in a third country, and so on. The 1921 Act is simply incapable of dealing with

this problem, and again the difficulty is that the remedy is only prospective in nature. Once a proceeding is filed and prosecuted to the point of withholding of appraisment, the "hit" in the United States market has ended and the dumper has "run" to another market, only to return to the U.S. at a later date.

D. Inventory Dumping

Another example set forth in my 1980 testimony showed the difficulties of applying the Antidumping Act of 1921 to "inventory dumping". In the consumer products area, and increasingly in other areas as well, foreign sellers are establishing subsidiaries or affiliates in the United States which have the capability of importing and warehousing merchandise before reselling it to U.S. purchasers. Under the 1921 Act, dumping does not occur in such circumstances until the merchandise is resold by the U.S. warehousing subsidiary to an independant party in this country. Duties, however, must be imposed at the time of importation. This creates the possibility -- which has in fact occurred in the motorcycle market and in other situations -- that a foreign seller can ship a large quantity of merchandise to the United States, let it build up in the inventory of its U.S. subsidiary or affiliate, and then resell it at very low, dumped prices with impunity. An antidumping proceeding may be brought, and it may even result in a finding of dumping. However, the goods are already in the country and cannot be subjected to the duties. In short, without a retrospective damages remedy, the U.S. industry has no remedy at all.

E. Conclusion: A Damages Remedy Is Needed

In each of these cases, a remedy in damages is needed to protect U.S. industries. Such a remedy would provide compensation to the U.S. producers for injury which cannot be reached under present law. Moreover, the potential for such awards of damages would deter foreign sellers from engaging in the types of unfair pricing described above.

II. Suggested Improvements in S. 2167

In devising legislation to revitalize the 1916 Act, Congress

should adopt a conservative approach. The very idea of a damages remedy for dumping will be extremely controversial in international trade circles, and is likely to generate protests from our trading partners. Moreover, some government agencies -- notably the Department of State, the Office of the U.S. Trade Representative, and the Antitrust Division -- may well oppose such a bill if it is perceived as being broader and more draconian than is necessary to meet legitimate needs for protecting U.S. industries and ensuring fair pricing of imports. I therefore urge that your legislative considerations be guided by the following principles:

First, the legislation should be limited to relief in the form of damages. Criminal penalties are unnecessary and excessive, and moreover are likely to be unenforceable against those who really control the dumped pricing policies -- the executives of the foreign corporations. The present bill's provisions for injunctive relief and for an order excluding goods from entry into the United States are also inconsistent with the rationale of providing a retrospective remedy. These provisions provide prospective relief, which is now covered by the 1921 Act. To the extent that it is believed that such prospective relief comes too slowly under the 1921 Act, that defect is appropriately remedied by authorizing an award of damages for injury caused by imports which enter the United States at unfair prices before an imposition of antidumping duties under the 1921 Act process.

Second, treble damages are excessive and inappropriate. The aim of this legislation should be to compensate U.S. industries for injury suffered as a result of dumping. Single damages are sufficient to achieve that goal. Treble damages are punitive in nature. A punitive approach was appropriate under a law which required a showing of specific anticompetitive intent. Here that requirement has been deleted -- quite properly, in my view -- and thus only a compensatory, single-damage remedy should be invoked.

Finally, the damage remedy should be applied only to the foreign exporter and/or a U.S. importer related to that foreign exporter. To apply this law to unrelated U.S. importers -- as would be the case under the present Section 3(a) of the bill -- would place those importers in an

impossible position and have a true "chilling effect" on trade. U.S. importers who are not subsidiaries of or otherwise affiliated with the foreign exporter cannot be expected to know when the merchandise which they import is or is not dumped. They do not have access to home market price levels, much less to the cost of production of the foreign exporter. To subject them to the damages remedy is therefore unfair and inappropriate.

It may be argued, however, that it is necessary to impose the remedy upon the importer, because the assets of the foreign exporter may be unavailable for execution of the damages award. There are two responses to this concern. First, many foreign exporters now have extensive assembly, production and/or distribution facilities in the United States. These would be subject to attachment in execution of an award of damages. Second, even where the foreign exporter has no assets whatsoever available for attachment in the United States, the award of damages against that exporter has a substantial impact. It would make it much more difficult, and perhaps impossible for that exporter to continue doing business in the United States. Each sale in the United States by that foreign company would raise the possibility that the money payable by the U.S. purchaser to the foreign firm could be attached in execution of the judgment. I have represented enough foreign companies in U.S. litigation to tell you that this is a matter of very serious concern. I have seen a number of instances in which foreign companies have simply withdrawn from participation in a potentially lucrative U.S. market, forced to do so by the possibility that a U.S. judgment could be executed against them by reason of their continuing sales into the U.S.

In conclusion, let me say again that I strongly support the concept of a revitalized damages remedy in the dumping area. We need such a law if the antidumping aspect of U.S. trade policy is to be effective. But I cannot support S. 2167, because I feel that it simply goes too far. I hope that the changes which I have discussed in this testimony can be made, so that I can enthusiastically support this legislation.

UNFAIR FOREIGN COMPETITION ACT OF 1982

THURSDAY, JUNE 24, 1982

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to call, at 2:47 p.m., in room 2228 of the Dirksen Senate Office Building, Hon. Arlen Specter (acting chairman of the committee) presiding.

Also present: Senator Heflin.

Staff present: Bruce Cohen, chief counsel; Wiliam Loughrey, counsel; and Robert Finkel, staff assistant.

OPENING STATEMENT OF SENATOR ARLEN SPECTER

Senator SPECTER. The hearing will come to order. I regret that it is now 2:47. Senator Heflin and I were in a hearing until close to 1 o'clock on the Criminal Law Subcommittee on the insanity defense issue, and I have just met a quorum call, so I regret the tardiness. We will begin at this time.

These hearings are on Senate bill 2167 and Senate bill 2517, both proposals designed to provide an effective disincentive for foreign firms to dump products in the United States.

On May 24, we had hearings on these two bills, and testifying on behalf of this legislation were industry representatives, legal scholars, and various public officials who all expressed their concern over these issues. And both bills were received favorably.

Although dumping is a violation of GATT, many foreign producers continue to sell in the United States at less-than-fair-value prices. This has caused a loss in profitability for U.S. firms and has thrown American workers out of their jobs. It is for these reasons that many of us feel that a revision of our antidumping legislation is urgently needed. The steel industry has been especially hard hit by dumped and subsidized products. The June 10 Commerce Department decision confirmed the large subsidies that are given to foreign firms, which in one case reached 40 percent. Yet, for the past year and a half, foreign producers have been able to sell these goods in the U.S. market without being subject to any sort of a penalty.

Today, we have with us Mr. Donald deKieffer, general counsel from the Office of the Special Trade Representative, and Mr. Lawrence Brady, Assistant Secretary for Trade Administration in the Department of Commerce.

Before proceeding to the witnesses, I shall call on Senator Heflin for any introductory remarks he may care to make.

Senator HEFLIN. I have an opening statement, and ask that it appear in the record. I won't take the time to read it.

Senator SPECTER. It shall appear. And the full text of my opening statement, too, shall appear in the record, only part of which I have presented.

[The prepared statements of Senator Specter and Senator Heflin follow:]

PREPARED STATEMENT OF SENATOR ARLEN SPECTER

We will begin these hearings on Senate bill 2167 and Senate bill 2517; both proposals are designed to provide an effective disincentive for foreign firms to dump products—that is, sell at less than fair value prices—in the U.S. market.

On May 24th, I chaired the first hearing on S. 2167 and S. 2517. Testifying on behalf of this legislation were industry representatives, legal scholars and various public officials, who all expressed their concern over this issue. Both bills, I am pleased to say, were very favorably received.

Although dumping is a violation of GATT, many foreign producers continue to sell in the U.S. at less than fair value prices. This has caused a loss in profitability for U.S. firms and has thrown American workers out of their jobs. It is for these reasons that a revision of our antidumping legislation is urgently needed.

The steel industry has been especially hard hit by dumped and subsidized products. The June 10th Commerce Department decision confirmed the large subsidies that are given to foreign firms, which in one case reached 40 percent. Yet, for the past year and a half, foreign producers have been able to sell their dumped and subsidized goods in the U.S. market, without being subject to any sort of penalty.

One analyst has determined that over the past seven years, dumping has cost the steel industry at least $20 billion in terms of lost revenues, wages and benefits. Unemployment in the steel industry alone due to dumping may be as high as 20,000 workers. The steel industry is not alone in its fight against unfair trade practices. The television, typewriter, textiles, cement and agricultural industries have all been affected by unfair competition at one time or another.

In short, foreign producers often "dump and run" in the U.S. market, in the process materially injuring American industries. The legislation we are discussing today is designed to improve America's trade laws so that we can be more assurred that our free international trade is also fair trade.

Today, we have with us Mr. Donald deKieffer, General Counsel from the Office of the Special Trade Representative, and Mr. Lawrence Brady, Assistant Secretary for Trade Administration from the Department of Commerce. Gentlemen, I am sure that you share our concern over this issue, and we anxiously await your comments on these bills.

PREPARED STATEMENT OF SENATOR HOWELL HEFLIN

Mr. Chairman, one month ago today, this committee gathered to hear testimony on Senate bills 2167 and 2517, two possible steps towards a solution for a very real and very drastic problem for the American economy. Today, we are gathered to again examine this legislation, and I sincerely hope that substantive action will come very soon. I commend Senators Specter and Mathias for their initiative in sponsoring this legislation.

Unemployment in our Nation has now reached what a few years ago was a totally unthinkable figure—9.5 percent—and it continues to move upward. A large number of these working men and women are idled because of the hard economic times that important industries—particularly including steel and rubber—are suffering through.

In turn, these industries are suffering, in large part, because of the dumping into the United States of materials by foreign producers at cut-rate, government-subsidized prices. It is this problem that these bills would attack.

These industries are in desperate need of immediate assistance. Two weeks ago, they received their first help when the Commerce Department issued a preliminary finding that steel imports from several foreign countries are benefitting from government subsidies. Although that ruling is an important first step for domestic industries, it is absolutely imperative that further steps be taken if we are to see any positive results, and I believe the next logical step is adoption of this legislation.

Mr. Chairman, I am a firm believer in free competition. I believe it is absolutely essential—but no more so than fair competition!

I also firmly believe that it is unfair for foreign countries to dump products into the United States that sell for less than American products, only because production is subsidized by foreign governments.

I believe that if American workers are given a fair and equal chance, they can outwork and outproduce any other workers in the world.

Unemployment in my home State of Alabama has now reached 14.7 percent and it is much, much higher in those areas where steel and rubber are the cornerstones of the local economy.

We must give these industries, these working men and women, the fair and equal chance they deserve. We cannot allow foreign countries to continue exporting their employment problems to the United States.

Mr. Chairman, I believe it is crucial that we act at this time if we are to have any chance of saving American industry. I look forward to working with you and the other distingusihed members of this committee to develop solutions for these urgent problems.

Thank you, Mr. Chairman.

Senator SPECTER. Welcome, Mr. Brady. We appreciate your coming this afternoon. Again, I regret the delay in calling upon you. We will be pleased to hear from you at this time.

STATEMENTS OF LAWRENCE J. BRADY, ASSISTANT SECRETARY FOR TRADE ADMINISTRATION, ACCOMPANIED BY JUDITH HIPPLER BELLO, DEPUTY (FOR POLICY) TO DEPUTY ASSISTANT SECRETARY FOR IMPORT ADMINISTRATION, U.S. DEPARTMENT OF COMMERCE; AND DONALD E. deKIEFFER, GENERAL COUNSEL, OFFICE OF THE U.S. TRADE REPRESENTATIVE

Mr. BRADY. Thank you, Mr. Chairman. We appreciate the opportunity to testify on S. 2167 and S. 2517, bills which would amend the Antidumping Act of 1916. We think these bills merit the close scrutiny which your committee is giving them.

The Antidumping Act of 1916 provides for private treble damage actions and criminal sanctions against predatory dumping. S. 2167, as recently revised, would amend the 1916 act by eliminating the requirement of specific intent; eliminating any criminal penalties; and providing for only compensatory damages incurred as a result of dumping, not for punitive treble damages. In addition, the amendment would permit final affirmative antidumping determinations by the Department of Commerce to be used as evidence of dumping. S. 2517 would replace the requirement of specific intent with a requirement to show that defendant knowingly or purposely engaged in dumping in the United States. It would raise possible criminal fines from $5,000 to $50,000. The bill would maintain the treble damage remedy.

We believe that the Antidumping Act of 1916 has played little if any role in discouraging or preventing dumping in the United States. This is in large part because of the requirement to prove a specific intent to destroy or injure a U.S. industry, a burden which has, in practice, proved to be impossible for plaintiffs to meet.

Despite the ineffectiveness of the 1916 act, substituting a judicial procedure for administrative antidumping investigations would, we believe, be a mistake. It is our view that the Department of Commerce and the International Trade Commission can handle these cases much more expeditiously than could the courts. The Trade Agreements Act of 1979 significantly revised our antidump-

ing law, including shortened time periods for conducting an investigation. The Department must normally make its preliminary determination as to whether sales at less than fair value have occurred within 160 days of the date an antidumping petition is filed. If it makes an affirmative preliminary determination, the Department orders an immediate suspension of liquidation of goods entering the United States. In addition, importers are required to post a cash deposit, bond or other security in the amount of estimated antidumping duties. If the Department additionally determines that critical circumstances exist, all merchandise entering the U.S. during the 90-day period prior to the date of the preliminary determination would be subject to antidumping duties. By contrast, civil litigation in the Federal courts can take years. For instance, the current Zenith litigation, which includes 1916 act charges, began in 1970. We believe that the improvements in the antidumping law made by the Trade Agreements Act and the Department's timely administration of that law render the proposed amendments to the 1916 law less useful.

In our view, it would be inappropriate in antidumping cases for the courts to impose criminal sanctions without any showing of specific intent. We are also troubled by provisions for injunctive relief which would absolutely bar imports either temporarily or permanently. Based on our experience with the antidumping law, it is often extremely difficult for a foreign manufacturer to know in advance whether he is dumping. The manufacturer may be unable to predict the method which the Department will use to determine foreign market value or whether the Department will adjust wholesale prices to account for differences in circumstances of sale or differences in the merchandise. U.S. importers know even less whether the goods they are buying from overseas suppliers are being dumped. Often they have no knowledge of the prices charged or the costs incurred overseas by their foreign suppliers. Moreover, dumping margins can be radically affected by currency fluctuations over which foreign manufacturers and U.S. importers have no control.

Furthermore, we believe that the bills' proposals to permit the imposition of an import ban and/or the assessment of duties at the time a complaint is filed may be inconsistent with our international obligations. Dumping is subject to internationally agreed-upon rules set forth in the 1979 Antidumping Code. The Antidumping Code seeks to balance the concept of free trade with protection against unfair trade practices. Under no circumstances does it permit the imposition of provisional measures more than 90 days before an affirmative preliminary determination of dumping. Moreover, under the code, a ban on imports is not permitted as a remedy for dumping, with the exception of a voluntary agreement to cease exports.

These internationally agreed-upon rules leave much to be desired. I sympathize with your concern for injuries to industry that occur prior to the imposition of the antidumping duties. But I fear that the unilateral actions proposed by these bills could be counterproductive. We could expect our trading partners to challenge any civil or criminal fines imposed by courts under a revised 1916 act. Regardless whether we ultimately prevailed against such a challenge, unfortunate consequences would doubtless ensue. First, re-

taliatory sentiments would be heightened. Particularly at this time, when the Department is conducting important antidumping investigations of steel products from various countries, and following the Department's recent preliminary affirmative countervailing duty determinations regarding certain steel products from various countries, some of our most longstanding trading partners are highly critical of our trade policies and of our implementation of the 1979 international trade agreements. From a foreign relations point of view, this would be an unfortunate time to provide additional and controversial penalties for dumping. Second, any challenge in an international forum would inject an additional uncertainty into an already complex and uncertain area.

We recognize that the present antidumping law does not provide any compensatory relief to a private party who suffers damages, particularly between the time imports begin to injure a U.S. industry and the time the Department suspends liquidation. We suggest that this problem be carefully studied and analyzed by the administration with a view toward raising this matter in an appropriate international context.

I hope that our testimony today will help the committee in their consideration of this legislation.

Thank you.

Senator SPECTER. Thank you very much. Mr. Brady, you say that the bills' proposals to permit the imposition of an import ban and/or assessment of duties at the time a complaint is filed may be inconsistent with our international obligations. Is it possible that it may not be inconsistent with our international obligations? That language of "may" appears to leave room for a contrary interpretation.

Mr. BRADY. Mr. Chairman, we have difficulty in constructing an answer, partly because of the fact that there always is obviously an element of the unknown. In addition, we would like to defer taking a position which we might later have to defend in an international context. It is our feeling, however—and I think Mr. deKieffer can amplify on this—that we would have some very serious problems.

Senator SPECTER. Well, I want to explore those problems openly and incisively, and I want to find out what they are. There is no question that dumping is illegal, that we have adopted not only a policy but laws against dumping, correct?

Mr. BRADY. That's right, but we are also a party to international agreements undertaken by this Government vis-a-vis our practices, and by foreign governments vis-a-vis their practices.

Senator SPECTER. What I want to find out is what those international agreements are, and whether or not they permit legislation of this type. If they don't, then there may be an issue as to whether they can be modified. It just seems to me that it is an intolerable situation to have the kind of dumping which goes on without any effective remedy. We have an established law which, in my judgment, provides no effective remedy.

Mr. BRADY. Well, Mr. Chairman, I would make a very strong case that under this administration, particularly since the function was transferred from the Department of the Treasury to the Department of Commerce, we have had the toughest, most consistent, and the most timely implementation of the antidumping provi-

sions of the law. I think this has been demonstrated by the actions taken in any number of cases since we have been in office—not the least of which, of course, are the steel cases in which preliminary determinations were announced a week ago.

Senator SPECTER. Let us consider steel. There were actions under the trigger-price mechanism which were pending when the current administration took over on January 20, 1981. Am I correct?

Mr. BRADY. I didn't hear the first part of your question.

Senator SPECTER. There were actions pending under the trigger-price mechanism when the administration began on January 20, 1981.

Mr. BRADY. No, sir. We self-initiated a number of cases after we came into office, based on the monitoring we were doing under the trigger-price mechanism.

Senator SPECTER. Well, what happened to the actions which had been brought in 1980 and in 1979?

Mr. BRADY. They were withdrawn by the industry.

Senator SPECTER. And did the industry then reinstitute actions under the trigger-price mechanism procedure?

Mr. BRADY. No, it was the Department of Commerce—in a precedent-setting nature, as a matter of fact—that self-initiated the cases. As a matter of fact, the original steel cases, had been filed, the TPM had been set up under the previous administration in lieu of the cases. As a result of the TPM's establishment, the industry withdrew its cases.

Senator SPECTER. The industry was blackjacked to withdraw their cases under the trigger-price mechanism under the Carter administration under the threat that the Carter administration would not proceed to enforce certain aspects of the trade law, isn't that correct?

Mr. BRADY. Mr. Chairman, I wasn't here then, and I don't know, but I can tell you——

Senator SPECTER. You were some place then.

Mr. BRADY. I wasn't administering this law at that point. I can tell you that I believe the withdrawal of those cases was done in good faith by the industry. It was believed that the trigger-price mechanism would accomplish the same objective, as cases: that is to deter the excessive imports into this country of steel products which the industry believed were being dumped or subsidized.

But, again, it takes a great deal of time and effort to substantiate: (1), injury, and (2) the facts on dumping and on subsidization.

Senator SPECTER. Mr. Brady, what I would like to establish through you, and your expertise in this field, is the historical chronology. You testify that the industry acted in good faith and I agree with that, but representatives of the steel industry have told me that they were blackjacked into withdrawing their actions under the trigger-price mechanism during the Carter administration; and I can recall when those events occurred; the Carter administration said that they did not have sufficient resources to continue the proceedings in the Commerce Department if the industry insisted on proceeding under the TPM. And Phillip Klutznick, then Secretary of Commerce made those statements, which were publicly reported.

My understanding of the chronology has been that there has not been vigorous pursuit of these matters by the Commerce Department even since the current administration came in.

Mr. BRADY. I would take vigorous exception to that, Mr. Chairman.

Senator SPECTER. All right, specifically what has been done.

Mr. BRADY. I think the fact that we self-initiated investigations when our TPM monitoring led us to believe unfair trade practices were occurring indicates that we were very tough. Let me also suggest, Mr. Chairman——

Senator SPECTER. When were they initiated?

Mr. BRADY. I can get you that information.

Senator SPECTER. Were they initiated in January of 1982?

Mr. BRADY. I believe they began in November and December of 1981. But let me, Mr. Chairman—this is an important point here——

Senator SPECTER. What happened until that time?

Mr. BRADY. I will tell you what happened between the time when we began suspecting that the trigger-price mechanism was not being abided by by our trading partners, and the time we self-initiated investigations. We repeatedly asked the domestic steel industry to provide us information on injury, because self-initiation of investigations is futile unless it is likely that the International Trade Commission will find injury. We waited for months for that information. And if you are discussing this matter with steel industry representatives, I think they would have to be above board in confirming that statement. We were waiting for information because we cannot, in the final analysis, make an injury case for the industry at the ITC. The industry itself must show that it is being injured.

Senator SPECTER. When did you make those requests to the industry?

Mr. BRADY. The Secretary made the request to industry as early as August of 1981.

Senator SPECTER. What happened between January and August?

Mr. BRADY. I assume the industry worked on getting the information on injury.

Senator SPECTER. Mr. Brady, I would appreciate it if you would provide the specifics to me, and, if it is in accordance with your practices, the correspondence, because I get a very different story from the steel industry from my State, a very different story.

So I would appreciate the specifics concerning what has happened from the time the administration took over, because this issue was pressing in 1979 and 1980. It was nothing new, and we all knew about it. The industry has contended that there has not been sufficient action under the existing laws, which I frankly believe to be inadequate.

I would be very interested to know the specifics as to what the Commerce Department has done.

Mr. BRADY. Well, I will be happy to provide that. Mr. Chairman, I think the statements made by the leaders of the domestic industry following our preliminary determinations on June 10 indicate at least partial support of our actions.

[Subsequent to the hearing the following material was received:]

UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

JUL 26 1982

Honorable Arlen Specter
United States Senate
Washington, D.C. 20510

Dear Senator Specter:

Thank you for inviting me to testify before the Senate Judiciary Committee on bills S.2167 and S.2517 that would amend the Antidumping Act of 1916. I would like to take this opportunity to clarify and expand upon my response to your question concerning actions taken by the Department of Commerce over the past two years to address the steel trade problem.

The Department's chief objective has been, and will continue to be, to ensure free and fair competition in the trading of steel in the United States. To do so, the Department has been committed to the strict enforcement of the U.S. antidumping (AD) and countervailing duty (CVD) statutes. Although this commitment applies to the importation of all products into the United States, it is especially important in the case of steel because of recurrent problems in the international steel trade and the particularly difficult circumstances faced by the domestic steel industry.

In recent years, the Department's primary instrument for enforcing our unfair trade laws with respect to steel has been the steel trigger price mechanism (TPM). The TPM was introduced in 1978 as a substitute for multiple unfair trade complaints filed by domestic petitioners and to provide for the expedited initiation of AD and CVD investigations. Essentially, the TPM was an administrative system under which the Department monitored imports of basic steel mill products. Trigger prices were established based on Japanese production and shipping costs to the U.S., since the Japanese were considered to be the most efficient producers of steel. When imports entered below the applicable trigger price, the Department then would examine the situation to determine whether an AD or CVD investigation was warranted.

The TPM continued in operation until March 21, 1980, when U.S. Steel Corporation filed major antidumping cases covering large quantities of steel imported from Europe. When these cases were filed, the TPM was suspended since it was not intended to supplement major unfair trade cases filed by the domestic industry. The staff that had been monitoring imports under TPM immediately was assigned to investigate the allegations in U.S. Steel's complaints.

In October of 1980, U.S. Steel withdrew its AD petitions in exchange for the reinstatement of the TPM for a transition period of three to five years, on the understanding that the European Communities would press ahead in their restructuring efforts while the U.S. industry would continue its modernization of production and facilities. The TPM was reinstated on October 21, 1980, in a somewhat modified form containing a number of administrative improvements. A surge provision was included which enabled the Department to initiate investigations, when warranted, if there was a surge in imports of a particular product from a particular country when specific import penetration and domestic capability utilization thresholds had been reached. In addition, improvements were made in the administration of the TPM based upon GAO recommendations, trigger price calculations were made more transparent, and changes in the yen-to-dollar cost conversions were adopted to prevent sharp changes in trigger prices caused by short-term swings in exchange rates.

When the Reagan Administration assumed office, Secretary Baldrige personally reviewed the status and purpose of the TPM to determine whether it was the best way to enforce our laws with respect to injurious and unfairly traded steel imports. The Secretary concluded that the TPM, if it were vigorously enforced, would be an effective deterrent to injurious dumping and subsidization so long as all parties made reasonable efforts to live within its guidelines.

Throughout 1981, the Department fulfilled its commitment to the vigorous enforcement of the TPM. In the first half of the year, increased imports were largely accounted for by the importation of semi-finished products by U.S. mills for rolling and resale, as well as by the importation of pipe and tube items in short domestic supply. As time passed and foreign producers began to sell below trigger price -- in part because of the decline in their currencies relative to the U.S. dollar -- the Department began to accumulate data regarding likely unfair trade practices and evidence of injury to the U.S. industry. The Secretary asked the industry on several occasions to furnish evidence of injury that would be convincing to the International Trade Commission (ITC) which must make a preliminary injury determination before a AD/CVD case can continue. Indeed, throughout the summer of 1981 industry representatives urged us to be cautious about self-initiating cases, for fear that the ITC would terminate the cases for lack of injury. Only after the August 1981 import statistics became available (in September) did the industry advise us that it was confident that injury cases could be won. Within seven weeks, by November, we had developed sufficient information to self-initiate sound AD and CVD investigations against seven countries, in addition to three AD investigations which had been self-initiated in July (by contrast, private law firms can take more than six months to prepare AD/CVD petitions). During this time, we also took steps to strengthen our monitoring, of related party transactions, conducted twelve related party audits, and examined ten import surges for evidence of unfair trade.

To underline the seriousness with which the Department was executing its responsibilities, Under Secretary Olmer made an unprecedented personal appearance before the International Trade Commission (ITC) as it began its consideration of injury with respect to the cases self-initiated by the Department in November. In all these cases, the ITC made affirmative preliminary determinations of material injury or threat of material injury by unanimous vote.

Steel imports, especially from Europe, remained high throughout the last several months of 1981, and there was evidence suggesting that many foreign producers were continuing to ignore the TPM. In an effort to resolve the growing problem, we held extensive discussions with representatives of the U.S. industry, the European Communities (EC) and other foreign governments, urging all to abide by the guidelines of the TPM. In the end, the EC's response failed to convince the domestic industry that the TPM could continue to be an effective means of enforcing U.S. trade laws. Consequently, on January 11, 1982, seven U.S. steel producers filed 132 AD and CVD complaints against imports of nine basic steel mill products from eleven countries.

At no point during our discussions with domestic producers did we attempt to dissuade them from filing petitions. From the beginning, Secretary Baldrige has maintained that the Department was not attached to the TPM per se, and that the system would be continued only so long as it was in the interest of all concerned parties. Once petitions were filed, the Department proceeded immediately to a thorough and fair investigation of the complaints.

Currently, the Department is conducting 81 AD and CVD investigations of imports of carbon and specialty steel products. These include 52 of the cases filed on January 11 which remain active, in addition to others filed separately since January. On June 10, we announced our preliminary subsidy determinations for the 28 CVD investigations involved in the January 11 filings, applicable to imports valued at $1.4 billion in 1981. The Department found a wide range in the size of subsidization, from de minimis to over 40 percent of the f.o.b.

value of the imports. While only preliminary, the Department's findings provide U.S. steelmakers immediate relief from subsidized foreign competition by requiring the importers of covered products to post cash deposits or bonds equal to the estimated subsidy. This requirement ensures that duties will be paid upon completion of the investigation, if our final determinations on August 24 are affirmative and if the ITC finds material injury in its final determinations on October 8.

We will continue to process the investigations before us in an even-handed and expeditious fashion. Although we are proceeding with our investigations, Secretary Baldrige will continue to talk with representatives of the domestic industry and foreign governments concerning alternative approaches for resolving the steel trade problem. The Secretary has insisted, however, that any alternative resolution must relieve the U.S. industry of injury caused by unfair trade, as well as be compatible with the U.S. Government's law and policy regarding free and fair trade.

I appreciate this opportunity to elaborate the Department's positions and policies for addressing the steel trade problem. I hope I have been responsive to your concerns.

Sincerely,

Lawrence J. Brady
Assistant Secretary for
Trade Administration

Senator SPECTER. What statements are you referring to that they were glad to see the findings of the Commerce Department? What did they say that concerns in any way on the speed of initiation by the Commerce Department or the action the Commerce Department has taken?

Mr. BRADY. Mr. Chairman, we self-initiated some steel investigations. It was not the domestic industry that brought those cases. We brought them. The U.S. Government brought them.

Senator SPECTER. What statements did they make that support what you have just asserted, that they were pleased with what the Commerce Department had done?

Mr. BRADY. Maybe we are not talking to the same people, Mr. Chairman.

Senator SPECTER. Let's find out. I saw statements in the press that they were pleased with the findings that were made on June 10, but there was no line of congratulations for the Commerce Department for initiating them promptly; I saw nothing on that subject. If you have such statements, I want to see them.

Mr. BRADY. Well, Mr. Chairman, if the domestic industry does not tell you—and I would urge you to ask them—that my secretary in my department asked them for injury information as far back as August 1981, then I think there is a problem here in credibility.

The domestic industry could file a petition any time it wanted, and we would have prosecuted it vigorously, as we have done since the industry finally did file petitions on January 11. But we could not self-initiate investigations without adequate injury information. It would have been futile to go to the International Trade Commis-

sion not knowing that you had a pretty good chance of winning on the injury determination.

Senator SPECTER. When did United States Steel file its actions under the trigger-price mechanism?

Mr. BRADY. They didn't file them under the trigger-price mechanism; they filed them in January, and that is the point at which we suspended the trigger-price mechanism.

Senator SPECTER. January of what year?

Mr. BRADY. Of 1982.

Senator SPECTER. They filed cases during the Carter administration as well, didn't they?

Mr. BRADY. Yes, and I am not defending the actions of the Carter administration.

Senator SPECTER. I am just asking you for the chronology of those actions.

Mr. BRADY. It's my understanding that they did file some actions in 1980.

Senator SPECTER. Was the information that was contained in the actions filed in 1980 of insufficient assistance to you in ascertaining industry injury?

Mr. BRADY. Absolutely. That is not a static determination at all.

Senator SPECTER. How current does that have to be?

Mr. BRADY. I think, as I mentioned in my testimony, there is any number of factors that impinge on injury including the state of the economy and the fact that our automobile and appliance industries are down, meaning that we are consuming less steel. That is certainly one of the problems that the domestic steel industry is having. But it may not only be imports that are causing injury.

Our Department, you know, self-initiated some investigations and prosecuted them vigorously once we felt we could show that the domestic industry was being injured.

Senator SPECTER. The questions I asked concerning what happened from January of 1981 until August of 1981 and what information was available to you in January of 1981 relates to the issue as to whether you had a substantial body of information that you could have moved on in January of 1981.

Mr. BRADY. Mr. Chairman, there are two points. One, we did not have adequate information; and, second, we did not know until the summer of 1981 that the trigger-price mechanism was not functioning. It was approximately in the early summer of 1981—though people will argue over these dates—that we began to have very, very significant suspicions that the trigger-price mechanism was not being adhered to by our trading partners and that people were selling below trigger.

The additional problem involved is that there are delays of course in getting the statistics on any month's imports into the United States.

Senator SPECTER. Did the Commerce Department utilize the provision for imposing other remedies 90 days prior to the action which it took?

Mr. BRADY. We did not.

Senator SPECTER. And why not?

Mr. BRADY. If I may defer to my deputy to answer that question.

Senator SPECTER. Fine.

Ms. BELLO. Senator, we found that critical circumstances did not exist under the requirements imposed by the Tariff Act of 1930, as amended, most particularly in 1979.

Senator SPECTER. Could you speak a little closer into the microphone please?

Ms. BELLO. Yes, sir. That statute requires that in order for there to be a finding of critical circumstances, you must find, inter alia, that there have been massive imports of the merchandise within a relatively short period. Looking at the statistics that were available to us on steel imports from February through April of this year, we did not find the numbers in any of the cases in which we made preliminary determinations on June 10 to be massive within the context of the steel industry.

Even if we had found massive imports, we would have had to satisfy additional requirements in order to find critical circumstances. We did not reach this point since we found that this first prerequisite—massive imports—had not been met.

Senator SPECTER. Senator Heflin has to leave so I am going to defer to him at this time.

Senator HEFLIN. Let me ask you this. You started in January, we will say, of 1981 and went to June, when you made your preliminary determination. You mentioned statistics. Is there a problem of ascertaining the price that the steel is selling for in the country of manufacture, of production? Is there a problem of ascertaining that information?

Mr. BRADY. The problem of price occurs after you begin your investigation. What I was talking about was primarily the problem of ascertaining the statistics here in the United States of what is sold, at what price, and where.

Senator HEFLIN. Well, I am asking you: Is there a problem of securing information pertaining to the sales price in the country of production?

Mr. BRADY. Senator, it is my understanding that we do not have that problem in a dumping or a subsidy investigation. If a foreign company doesn't give us the information we need, we use what the domestic industry alleges to be appropriate information—which is usually much worse than or certainly as adverse as what is actually taking place in the country of manufacture.

Senator HEFLIN. What is the turnaround time from the fact that you would request?

Mr. BRADY. When a petition is filed, we develop a questionnaire which is then sent to the companies involved. We normally give them a month in which to respond. In some cases there can be a slight extension.

Senator HEFLIN. Well, what is the difficulty of the steel companies ascertaining the sale price that has prevailed in the country of production?

Mr. BRADY. Well, they are competitors, Senator, and those prices are normally not necessarily divulged by one competitor to another. Again, we are dealing with companies in different countries, and we are dealing with different modes of operation. There are difficulties.

Senator HEFLIN. The point I am getting at—it is under the present procedure a difficult and cumbersome task to get the prices

that you are selling for in the country of production. I mean, is that a fact? Isn't it difficult to try to find out what the price is? You have to do a lot of research?

Mr. BRADY. Senator, it may be difficult for the steel companies to try to get that information. It is not difficult for us to get it after a petition is lodged and we have a formal inquiry into the process.

Senator HEFLIN. Well, the steel people have to, in effect, or you on your own initiative have to initiate the cause. Now, I am trying to find out: is there a problem, and, if there is a problem, what is the solution to it?

Mr. BRADY. There is——

Senator HEFLIN. In order to get the information that they are selling in their country at a price which is substantially different than what the price is, or else on the production——

Mr. BRADY. Senator, I have to tell you that with steel that is not a major problem. On some of the other commodities——

Senator HEFLIN. Well, the testimony before us, the last hearing on this, that it was a problem.

Mr. BRADY. It has not been a problem for us in terms of these cases.

Senator HEFLIN. If you were to initiate yourself, how do you get the information on which you rely to self-initiate, as you described it?

Mr. BRADY. Senator, first, before we can self-initiate—and it's a new provision of the statute—we have got to have a fairly solid belief substantiated with facts indicating that there is dumping or there is subsidization. But over and above that, we need injury.

After we self-initiate, we can request the formal information from the country involved—and we did that when we self-initiated the cases.

Senator HEFLIN. Well, I am talking about before you request that, how do you make the determination to self-initiate?

Mr. BRADY. Well, we do it through any number of ways: we work with the industry, we work with our embassies overseas to try to research that kind of information, we use every available means we can, including the industry associations, to get that kind of information.

Senator HEFLIN. Well, you say it's no difficulty. We have had testimony that there is difficulty. There have even been suggestions that when the steel comes into this country that there has to be a statement of information filed showing what some of the products are selling for in the home country by the company that is exporting into the United States—that is just one idea. We have had expressions that there are difficulties obtaining this information.

Now, what I am trying to pursue is: Can there be a procedure by which there is an interchange, a better interchange, of information, or that you can acquire this information?

Mr. BRADY. Senator, I think I can summarize it by saying I don't doubt that the private industry would have difficulty getting the information. I don't think in the final analysis, certainly after we start an investigation, that we have difficulty with it, particularly on the steel cases. I wouldn't say that of the smaller cases, and particularly some of the less developed countries, where frankly the

information sometimes is very, very difficult to gather, even for the home government itself.

Senator HEFLIN. Well, has any thought been given to those areas, as to how you could get the information more readily and without delay and without a cumbersome approach?

Mr. BRADY. We have worked extensively to establish the subsidies library, for instance, which the Congress directed us to do, in terms of the practices of the foreign governments involved. We are coming to grips with an automatic capability to deal with the information-acquiring needs that we have; we are making progress in that respect. I can tell you that in the whole realm of things, getting that information after we have got a case would not be at this point one of the major problems that we would have.

Senator HEFLIN. Well, we accept that, after you start the case, after the case is started—nobody is disagreeing with you on that now, in what you are saying. But how do you get the information in the beginning, how does the steel company get the information, and how can a system be devised by which that information is made available more readily?

Mr. BRADY. I don't think there is any way around working with the foreign governments involved, working with the trade associations and the companies involved—I don't think there is any way of getting around that. What you bump up against is the sovereignty of the nation you are dealing with, and its unwillingness sometimes to make it easy for you to get that information—it's as simple as that.

Senator HEFLIN. What's wrong with some requirement that before it comes in through Customs or other places that information has to be made available pertaining to issues involved in this entire procedure, that would be available to industry and to government alike? Is there any problem with some type of custom information, they have to certify what the prices are in the country of origin?

Mr. BRADY. Senator, I can't answer that without getting legal opinion on that, because I don't know: (1) whether we have any international obligations that would be violated in that respect; and (2) whether there is any domestic legal restraint in our doing that. I can try to provide that for you, and I will be glad to—Mr. deKieffer might have some information on that question, I don't know.

Senator HEFLIN. Well, I would appreciate it if you would. Thank you.

Mr. BRADY. I will be glad to, Senator.

Senator SPECTER. Mr. deKieffer, we will turn to you at this time. We welcome you here, and look forward to your testimony. We have your full statement, which will be made a part of the record. If it is possible for you to summarize so as to leave more time for questions, that would be our preference.

Mr. DEKIEFFER. Thank you very much, Mr. Chairman. As a matter of fact, I would very much like to do that. Rather than read my testimony, I would like to go over some of the more salient points, particularly those that you have raised.

First, I would like to underscore something Mr. Brady mentioned a moment ago. The Reagan administration is committed to the vig-

orous enforcement of both our unfair trade practice laws and our other laws related to our international obligations. Today more antidumping and countervailing duty cases are pending than at any time since 1916. More section 301 cases, which enforce our international rights under the General Agreement on Tariffs and Trade, including the subsidies code and the other GATT codes are pending today than at any time since these codes were adopted. In the last 15 months we filed more cases than were filed in the previous 15 years to enforce our international rights, and more cases are pending today before the Department of Commerce under our antidumping and countervailing duty laws than have ever been pending in the history of those laws—and that goes back to 1896.

Mr. Chairman, we sympathize, in other words, with your motivation in introducing the legislation that you have. The kinds of pernicious trade distortion caused by dumping and unfair subsidization are something that is of very, very great concern to us as a matter of trade policy and as a matter of our commitment to free trade. In our view, there can be no free trade unless it's fair. And, by definition, trade cannot be fair if there is price discrimination or if foreign taxpayers underwrite part of the cost of selling products in this country.

In the last 18 months I think the Reagan administration has compiled a pretty good record of enforcing our laws.

One of the questions being asked about those laws—it is implicit in the legislation you have introduced—is whether our laws are adequate to the task or whether they are being enforced adequately? I think the answer to the second question, are they being adequately enforced, is an emphatic yes. To date in this administration the Department of Commerce has not missed any of its statutory deadlines. I emphasize, the rigor of those deadlines, particularly those established by the Trade Agreements Act of 1979, that are much more rigorous than any court proceeding. So, when a complainant brings a case before the Department of Commerce or the International Trade Commission, that complainant—the steel industry or the widget industry or the footwear industry or the mushroom industry—is guaranteed of getting its case handled expeditiously because of the administration commitment to meet these deadlines. The Department of Commerce and the International Trade Commission have abided by these statutory deadlines.

It seems to me that the question then becomes, given the fact that the laws we currently have are being vigorously enforced, are the laws enough?

There are at least eight different laws under which we can enforce our rights. Certainly the antidumping law alone is not sufficient to enforce the right of American business to compete fairly in its own market. While we do have a number of other laws, no agency in the administration, currently believes that the laws we have today are equal to the challenge of enabling American industry to defend itself against the variety of unfair competition that we see around the world.

Mr. Chairman, one of the more pressing problems in the international trade area cannot be addressed merely by amending the provisions of the Antidumping Act. Today, when we speak of dumping, the pictures of quiet steel mills and lines of unemployed men come

to mind. The Trade Agreements Act of 1979 was designed to erase that image by providing a legal remedy to our domestic industry. However, the Trade Agreements Act, and the concern that spawned it, had other undesirable side effects. To my mind, one of the most significant problems has been the excessive legalization of the Trade Act and our unfair competition laws.

Senator SPECTER. What do you mean by "excessive legalization"?

Mr. DEKIEFFER. The 1979 Trade Agreements Act provided for very, very complicated procedures. The procedures prior to the 1979 act were rather loose they allowed the administrators of the law a great deal of discretion. Congress, in my view, wisely said that the discretion allowed to the administrators of the law exceeds what the Congress had intended. Mr. Brady a moment ago referred to the fact that these laws were administered by the Department of Treasury at that time; the Finance Committee in particular felt that the administrators of the law at that time had abused their discretion, by permitting cases to drag on for years and years without resolution. So in the Trade Agreements Act of 1979, Congress put very strict statutory time limits on the periods within which the Department of Commerce had to make certain determinations. The act provides for interlocutory appeals to the Court of International Trade; they allowed a greater degree of transparency. The result of all these changes was to require industries, while they had more legal rights, to hire very specialized counsel to bring these cases to enforce these legal rights. The result of that has been to guarantee legal rights, but at enormous cost.

Well, United States Steel may be able to afford these expenses. And, Mr. Chairman, you, of all people, know the kinds of money that United States Steel and the other steel companies that have brought these cases have spent, to effectively bring their complaints before the Department of Commerce and the International Trade Commission. It's been in the millions of dollars.

And, frankly, I think that United States Steel's rights have been protected, but what about the smaller industries in Pennsylvania? Even the footwear industry is in very, very deep trouble. Can they afford to assess their rights under the law? To me, one of the most significant problems caused by the law itself is the inability of some of these smaller industries, to bring antidumping or countervailing duty cases because of the prohibitive costs. These smaller industries may have solid evidence of dumping and subsidized competition, but the cost of justice for these smaller companies is just too high.

Senator SPECTER. Is there an answer?

Mr. DEKIEFFER. I think there are a number of answers, and answers that I believe this committee is uniquely qualified to consider. For example, we do have a law on the books currently, the Equal Access to Justice Act, that has never been successfully invoked in an unfair trade practice case; This law was designed to enable people of lesser means to get meaningful access to the courts. No industry has ever——

Senator SPECTER. What can we do about that?

Mr. DEKIEFFER. I would think, Mr. Chairman, that hearings like this, and examination by your staff of the ability of industries, par-

ticularly smaller less well-heeled industries to bear the expense of this sort of litigation.

Senator SPECTER. Is there any private action which is possible under existing laws to stop dumping?

Mr. DEKIEFFER. Certainly the antidumping and countervailing duty laws themselves are, but the problem a lot of industries have, even if they have a good case, is cost. Suppose an industry sees an attorney here in Washington, and he says, fine, I will take it for $100,000, by the time that an industry has a case, they probably don't have that $100,000 or $200,000 that it takes to file it.

Senator SPECTER. Why shouldn't the U.S. district courts be open to parties who are injured by dumping to obtain equitable relief and injunctions?

Mr. DEKIEFFER. Mr. Chairman, I think that industries have two problems right now—one is time, and I think that you pointed that out in your bill, and second is money. Now, with regard to time, district courts axiomatically take much more time to resolve a case than permitted by the statutory requirements of the current antidumping and countervailing duty laws.

Senator SPECTER. The district courts can issue injunctions. They can also issue preliminary injunctions in a brief period of time.

Mr. DEKIEFFER. They can, but only with a very, very tough showing. Second, to resolve the issue ultimately——

Senator SPECTER. But the evidence can be mounted, and there has been complex litigation decided by a Federal district court in the course of a few weeks.

Mr. DEKIEFFER. Perhaps, Senator, but I think you probably have pointed to the exception that demonstrates the rule. By and large, litigation in Federal district court is not only time consuming but enormously expensive. And, frankly, the Finance Committee, and the entire Senate, in passing——

Senator SPECTER. But the difficulty is, Mr. deKieffer, that industries like the steel industry are going down the drain. It is operating at 43-percent capacity, and there are 108,000 American workers out of work out of 450,000. When you spell out the kinds of procedures which are available under existing law, which take very protracted periods of time, and the duties are imposed far down the road and do not compensate either the industry, the companies or the workers, it seems to me that it is a very ineffective remedy.

Mr. DEKIEFFER. Mr. Chairman, I hope that I at least touched upon one of the points that you mentioned, and the fact is that a company can go out and spend $2.5 million right now on litigation fees—and you are quite right, the U.S. Treasury collects the winnings—it seems to me that the committee would do well to study the possibility of expanding the Equal Access to Justice Act so that at the very least a company wouldn't have to bear the costs of litigating to enrich the Treasury Department.

Senator SPECTER. What aspect of the Equal Access to Justice Act are you referring to?

Mr. DEKIEFFER. Well, in particular it seems to me that a poorer industry—would be benefited by an extension of the Equal Access to Justice Act. In Pennsylvania, and in many States, we have industries that are being decimated by unfair competition—there is no question of it. Decimated industries, by definition, don't have

the money to pay for these litigation costs, and it seems to me that it would be a——

Senator SPECTER. What provision of the act are you referring to?

Mr. DEKIEFFER. The Equal Access to Justice Act, as I say, has never been successfully invoked to pay for unfair trade practices cases.

Senator SPECTER. What provision of the act are you referring to? What does the act do?

Mr. DEKIEFFER. The act applies to district court litigation in general. I would think that it might be worth the committee's attention to have it applied to litigation before the Department of Commerce and the U.S. International Trade Commission. I am not suggesting that this is an administration position. What I am——

Senator SPECTER. What does the act do with respect to district court litigation?

Mr. DEKIEFFER. In general terms it permits poor litigants in civil cases to receive funds from the U.S. Treasury for their litigation costs. Now, I would think that there could be some.

Senator SPECTER. That's a form of community legal services?

Mr. DEKIEFFER. It effectively is a form of that, but it applies to civil cases and it applies only to——

Senator SPECTER. Is there an appropriation for that?

Mr. DEKIEFFER. There is a very small appropriation for it. I would think that it——

Senator SPECTER. Does President Reagan support your testimony on this?

Mr. DEKIEFFER. I would suggest, Senator, that one of the things that I am——

Senator SPECTER. Does Mr. Brock support your testimony.

Mr. DEKIEFFER. Yes, Mr. Brock supports the general concept of having this committee investigate the possibility of looking at ways in which dumpers could pay for the litigation costs brought by industries. Now, I am not suggesting that——

Senator SPECTER. Would that be legal under GATT?

Mr. DEKIEFFER. Yes, it would be.

Senator SPECTER. Do you agree, Mr. Brady?

Mr. BRADY. I believe it would not be considered contrary to our international obligations.

Senator SPECTER. What is there in our international obligations which prohibits the Congress from enacting legislation to give injured parties the right to go into Federal Court and get injunctions?

Mr. DEKIEFFER. There are several provisions of the international antidumping code, which the United States acceded to fully in 1979; we have been a party to it in spirit——

Senator SPECTER. What are those provisions?

Mr. DEKIEFFER. Well, for example, Senator, there are a number of general provisions that limit the amount of money that can be collected in dumping cases to——

Senator SPECTER. Focusing in on the injunctive relief, what is there which prohibits the Congress from enacting legislation to provide equitable relief to stop dumping?

Mr. DEKIEFFER. The international Antidumping Code itself contains various provisions, including article 6 of the antidumping

code. We can certainly get a copy of the provisions of article 6 to you, Senator, and to the committee. I don't want to suggest that even legislation with the intent that you have, could not be made consistent with the international Antidumping Code.

Senator SPECTER. That is what I really am glad to hear.

Mr. DEKIEFFER. There are numerous provisions—I think that I have suggested one. I certainly am not suggesting that there be an appropriation for paying people. But I am suggesting that there are ways that we could be consistent with our international obligations, that the committee should in fact explore, which would not be inconsistent.

Senator SPECTER. Is there anything in the existing law that you refer to which would prevent Congress from enacting legislation to provide damages to injured parties, which will be collected from those who engage in dumping?

Mr. DEKIEFFER. There are ways to accomplish that, Senator.

Senator SPECTER. Is there anything to prevent the imposition of criminal sanctions?

Mr. DEKIEFFER. Yes, Senator, there are. When I suggest——

Senator SPECTER. You mean we have bargained away in our trade laws our power to impose criminal sanctions?

Mr. DEKIEFFER. Senator, I will suggest to you that the antidumping code and the countervailing duty code were negotiated during the prior administration. Now, with regard to who negotiated and the terms that we agreed to, I will be the last one to suggest to you that the subsidies code in particular is a model of us getting and everybody else giving. But, Senator, we have in fact agreed to a number of these codes.

Senator SPECTER. What provisions are there which limit Congressional authority to enact criminal statutes against dumping?

Mr. DEKIEFFER. Senator, the Antidumping Code itself doesn't speak to criminal sanctions, it doesn't speak to injunctive relief. What it does speak to is a limit on the relief in antidumping cases to an assessment of duties sufficient to offset the margin of dumping. Now, when I suggested to you that there are methods which I believe to be consistent with our international—without question totally consistent, with our international obligations—I believe that working with staff at a technical level we could accomplish that.

Senator, I will repeat Mr. Brady's reluctance that he expressed a moment ago, to go into all the details—and I am sure you can appreciate this—of ways in which the United States might be in violation of its international obligations. Mr. Chairman, my particular job is, effectively, the chief prosecutor for the United States, or the chief D.A. for the United States, in the international forum. I am charged with prosecuting and defending all the cases in the GATT.

Senator SPECTER. In the international——

Mr. DEKIEFFER. In the GATT, in international fora in the trade area. And I am not going to state here that I think conclusively the United States would be in violation of any of its international obligations. I have had numerous disagreements with some of our allies about what the international obligations of the United States are.

But, frankly, I believe that the motivations or the concerns you have expressed are ones that the Reagan administration shares,

and that there are ways to accomplish what you want to accomplish with some artful drafting.

Senator SPECTER. We are interested in exploring that. Senator Heflin and I represent States which have deteriorating steel industries, and many other industries are similarly involved—leather, textiles, mushrooms, a wide variety of industries. When dumping is illegal, my instinct as a lawyer and litigant is to provide a remedy.

Mr. DEKIEFFER. Quite so.

Senator SPECTER. I don't see any reason why the U.S. courts should not be open. I know there are foreign policy considerations, but my sense is that it is an appropriate avenue for Congress to consider. Congress should make a determination what those interests are, hear from the administration, and weigh those considerations in order to make a judgment.

That is what we seek to do.

Mr. DEKIEFFER. Well, Senator, we couldn't agree more with your motivations; we believe that American industry for too long a time has been abused—as I mentioned in my opening comments, this administration is committed to the vigorous enforcement of our laws. Just this Monday, or last Friday, I filed a case against Canada, as you may be aware, for what we regard as a flagrant violation of Canada's international obligations with——

Senator SPECTER. Is that on the subway issue?

Mr. DEKIEFFER. Yes, it is. This is the third time ever that we have filed a case without the complaint under our inherent authority to complain in international fora. We are frankly tired of having other countries flout their word, and that is exactly what has occurred in this case.

So I would like to repeat what Mr. Brady said, that we have had a commitment to very, very rigorous enforcement; I think we have had a pretty good record.

Senator SPECTER. I am glad to hear that. Mr. Brady and I will compare notes on all these representations from the steel industry. I want to get at the facts to see what is happening, and how we are working so that we can work better together to solve these problems. They are urgent problems which must be addressed.

Senator Heflin, I don't want to monopolize unduly.

You say that you think some improvements in the law can be ultimately drafted.

Mr. DEKIEFFER. Yes, sir.

Senator HEFLIN. You, of course, have only suggested the Equal Access to Justice procedure.

What other areas do you think in which they could be artfully drafted?

Mr. DEKIEFFER. Well, let me suggest one problem with the law that has become very apparent in the subway car issue that I was mentioning a moment ago to the chairman. There are problems in situations where there is foreign subsidization, of products that are not part of the stream of commerce. Steel has a stream of commerce; in other words, steel arrives in U.S. ports almost every day. But in certain situations where bidding on a project occurs today but the first goods aren't delivered for another year and a half or longer, the existing law is incapable of reading the problems. By the time a countervailing duty is imposed the industry

that has been injured is no longer in a position to complete for that business. The concern is real. It's a concern not only in subway cars but also in aircraft where an order placed today does not result in delivery for a long time, so by the time the countervailing duty is imposed, it's way too late. The same is true particularly in things like power generation. Where long lead times between ordering and delivery are the rule.

I think that serious consideration should be given by the Senate to filling what amounts to a gap in the law, in a fashion consistent with our international obligations, and most particularly the subsidies code.

But there are areas—every time that we amend the law—and this is going to be the reason we need new laws, if we didn't need new laws we could do away with this institution, because times change. As I mentioned in my testimony, we do have eight laws currently on the books designed to handle various aspects of unfair trade practices. It may be that we are going to need some new laws to attack the kind of trade practices that some of our trading partners dream up almost on a day-to-day basis. There are nuances to not only what they dream up in terms of unfair trade practices, but also the kinds of trade that are going on currently. For example, we probably do not have adequate laws in the areas of investment and services, because there are unfair trade practices there that are not currently handled either under our own law or under the GATT. There is no code on trade in investment or trade in services, nor is there perhaps an adequate U.S. law in those areas.

So we do need to take a pretty close look at not only the applicability of the Equal Access to Justice Act, but also to broader issues like trade in services, trade in investment, and even trade in goods in cases where the product itself isn't going to be entering this country for some time after a deal is cut.

And I know the Department of Commerce is concerned about this; certainly the USTR is. And we would be happy to work with your staff in this regard; we think it's very important.

Senator HEFLIN. Well, we would appreciate very much if you could give us a framework of what language and drafting that you think in the areas of strengthening the laws, and if you could give us these areas, I think it may provide something.

Mr. DEKIEFFER. We are not suggesting any particular resolution of these. We do—and the chairman asked me if Ambassador Brock agreed with my testimony today—Mr. Brock agrees that it is a matter of concern, he agrees that we should properly investigate ways in which to make our laws more effective and our laws more available to everybody, not just to big companies that can afford it.

Senator HEFLIN. Well, obviously, from Mr. Brady's testimony and yours and others of the various procedures, interlocutory appeals, other procedures, the present mechanism leaves much to be desired, and what improvements could be done—I think we ought to have that. Now, that doesn't mean that we ought not to pursue what Senator Specter's bill has to give relief in court. But at the same time I think if you would furnish at least a listing of areas that you think would strengthen the procedure as the Department

of Commerce thinks about it, I think at least we would like to have it to be considered.

Mr. DEKIEFFER. Senator, we would be more than happy to give you our recommendations. Of course, we wouldn't presume from USTR's point of view to suggest the way that the Department of Commerce might strengthen its procedures. But I daresay that there are methodologies that the administration could support to close what are not just small loopholes, but obvious gaps in the coverage of our laws.

There is no question that industries like the steel industry are being injured: not by what amount to, but what are flat out unfair trade practices. Nobody denies that.

Senator HEFLIN. Could you also give us in effect a written memorandum or document to the effect of how the Specter bill might impact on present treaties that exist and whether there are some problems with it? It may well be that Congress may desire to adopt the Specter bill, but that doesn't mean that we would not attempt to, quote, artfully draft, end quote, this to prevent or minimize possible conflicts between existing treaties and agreements.

Mr. DEKIEFFER. Senator, I think that it might be very useful if we worked with the staff to develop that language rather than merely criticizing the bill the way that it is; I think it might be more useful for us, in cooperation with the Department of Commerce, to work with your staff to try to come up with ways that you can do it; rather than telling you what's wrong with it, let's see if we can't make it right.

Senator HEFLIN. Some of that may be judgments that the committee has to make. I think maybe if we could have an outline from a legal viewpoint of possible conflicts with existing agreements with countries, wherein the Specter bill might have some problems—if we can identify those, it would be helpful. And that is not to say that on the other hand that you are not welcome to do as you suggested. We are trying to solve a problem, we are trying to get a remedy, and we are trying to get a remedy to protect against a really atrocious trade, unfair—as you said in the beginning, we believe in free trade, but at the same time it's got to be fair trade.

Mr. DEKIEFFER. Precisely.

Senator HEFLIN. When it's not fair trade, where is the remedy? And from testimony of all people concerned, the present mechanism, while being vigorously enforced, by your administration—at least that is what you say you are doing, and we will assume that you are—but obviously there are defects, and obviously there are a lot of problems that are involved in this matter. And we are seeking a solution to try to remedy the problem that we have, and there may be different approaches.

But at least the Specter bill gives some immediate relief.

Mr. DEKIEFFER. Senator, we would be more than happy to work with you on that. I would be happy to submit documents to you and your staff. We would be glad to work with them, too, to try to resolve the differences rather than merely reciting 15 reasons why we oppose the Specter bill. However, we must oppose the Specter bill now because of the significant problems that we have with it.

But I don't think that all of those problems are insoluble, because we share——

Senator HEFLIN. You only really told us many problems wherein they violate, and why you do it is more of a policy, as I gather from the State Department, than anything else.

Mr. DEKIEFFER. I wouldn't conclude that, Senator. I think the concerns that we have go beyond the mere technical. I think a lot of the problems are soluble, though, and I guess the one thing I want to make sure that you appreciate is how much not only USTR and Bill Brock in particular share the concern that you have, and I hope that it is not only a matter of sharing a concern as a matter of rhetoric, but sharing a concern as a matter of doing something about it.

And we acknowledge that a lot of our laws are not what they ought to be.

Senator HEFLIN. Well, we will look forward to your written statement, and then we will evaluate that concern.

Mr. DEKIEFFER. Thank you.

[The prepared statement of Mr. deKieffer follows:]

Prepared Statement of Donald E. deKieffer

Good morning. It is a pleasure to appear before the Committee again. While the Administration opposes this legislation, we can certainly sympathize with the motivations of its sponsors. The Antidumping Act of 1916 has never been successfully invoked. This is a reflection more on the adequacy of international rules requiring fair pricing policies than adherance to this principle by our offshore competitors. There can be little question that many, if not most, of our trading partners do not share our strong commitment to open an equal competition in the marketplace.

The difficulties with the 1916 Antidumping Act were recognized within 5 years of its passage. A new law, the Antidumping Act of 1921, enabled victims of dumping to gain some protection from the prenicious effects of anticompetitive pricing practices but with a far lower standard of injury being required. Further modifications in the Antidumping Act and its companion, the Countervailing Duty Law were made in 1930 and most recently in the Trade Agreements Act of 1979. In the 66 years since the enactment of the 1916 Act, the United States has also attempted to achieve international recognition of the value of free trade and the distortive effects of subsidization and price discrimination. The United States was instrumental in promoting and successfully negotiating the International Antidumping Code, the General Agreement on Tariffs and Trade (GATT), and most recently the Subsidies Code under the auspices of the GATT. These agreements provide the framework for attacking both price discrimination and unfair subsidization of private enterprise by requiring products which enter our market to fully reflect their cost of production and to be free of discriminatory pricing.

In addition, the 1979 Trade Agreements Act significantly strengthened our own fair trade laws. The provisions of the '79

Act, together with some changes in the Trade Act of 1974, were designed to accomplish several goals:

1. Reduce the time necessary for resolution of antidumping and countervailing duty cases;
2. Give greater certainty to domestic industries that valid cases would be tried in a fair manner;
3. Provide for greater "transparency" of unfair trade practice proceedings;
4. Remove most of the "political" elements from countervailing duty and antidumping cases;
5. Bring the United States into conformity with its international obligations, particularly the GATT and related Codes.

By and large, the law has achieved its intended result. There are more antidumping and countervailing duty cases being processed in the Reagan Administration than at any time since the passage of these laws in 1921 and 1896 respectively. Further, the Administration has abided by the strict statutory deadlines incorporated in the 1979 Act, giving far more expeditious relief to adversely affected domestic industries than would be available in any court.

This speed has not been purchased at the price of fairness. The procedures employed by the Department of Commerce and the International Trade Commission are recognized internationally as the standard for objectivity and transparency. Aside from some minor bickering, no serious complaints have been brought against the United States in international fora alleging violations of our obligations under the antidumping code...this despite the fact that the United States has more outstanding dumping proceedings than any country in the world with the possible exception of Canada.

The Antidumping Code is one of the least controversial of any of the codes in the GATT. It works well and we are in full conformity with its provisions.

In sum, we have a good law, it is ably and expeditiously administered and we have kept our word internationally.

All this is well and good -- but the bill before this Committee implicitly asks: does the law provide adequate protection from unfair trade practices?

The answer is simple: No. The Congress has realized this on numerous occasions, and has fashioned different remedies to attack various types of unfair practices. The Antidumping Act by itself cannot reach the plethora of actions we instinctively know to be unfair. That is the reason we have more than eight different mechanisms to attack foreign practices which affect our commerce. The antidumping law, used alone or together with our other regulations pose a formidable barrier to unfair practices.

This is not to suggest that our laws cannot be improved. In the subsidies area, for example, the international rules of conduct are much less settled than in antidumping and new subsidy schemes are hatched almost daily by our offshore competitors which frustrate the intent of our own countervailing duty law. We believe this issue deserves serious consideration both in the GATT and at home. The question of subsidies is high on the agenda of the GATT ministerial meeting scheduled for November. We hope for some tangible results and may request appropriate modifications in our own laws as a result of those discussions.

Another real problem in existing American law is cost. While the Trade Agreements Act of 1979 made antidumping and countervailing duty cases less political, they imposed rigid legal rules for their prosecution. Although these rules are not as legalistic as the Administrative Procedure Act or the Federal Rules of Civil procedure, they require specialized skills for their interpretation. Accordingly, the legal and accounting costs for bringing an antidumping proceeding have skyrocketed. While still considerably cheaper than court litigation such as that proposed in S. 2167, the cost of a simple antidumping case

can easily reach six figures. The new law has protected the rights of domestic industries much better than before, but with a caveat: the rights of large or rich industries are the ones most effectively protected. Smaller industries, even with good cases, simply cannot afford the litigation costs.

This is doubly ironic in view of the fact that a victorious petitioner does not receive any damages from the wrongdoer -- the U.S. Treasury collects any extra duties. While there has been some debate in the past concerning the theoretical application of the Equal Access to Justice Act to antidumping cases, that law has never been successfully invoked in this context. That law purports to provide at least some compensation for legal costs to less well heeled complainants, but has been unavailable in international unfair competition caes.

It might be useful for this committee to examine this issue in further detail particularly since government funding of such litigation would not be a per se violation of our international obligations.

In sum, we understand the motivations of this bill's sponsors but believe this legislation would be dysfunctional.

-- It is not consistent with our international obligations.

-- It would increase -- not reduce -- the time necessary for resolution of cases.

-- It would raise the already exhorbitant costs of prosecuting these cases.

-- It does not attack the most important and fundamental trade problem -- subsidization.

We recognize that the issue of unfair trade practices is of growing concern, and have pledged to strengthen the rules. Our record so far in this Administration speaks to our commitment in this regard.

For the record, I have submitted a memorandum which includes a partial listing of U.S. international obligation[5] the proposed

legislation would violate. For these reasons alone, the Administration would strongly oppose this bill. I hasten to add, however, that we are anxious to work with the Committee to further strengthen our laws to provide expeditious relief to adversely affected U.S. industries in a manner consistent with our GATT commitments.

Thank you.

Senator SPECTER. Thank you very much, Mr. Brady and Mr. de-Kieffer, we are obliged to you for coming today, and we look forward to working with you.

Thank you.

[Whereupon, the committee adjourned at 3:50 p.m., subject to the call of the Chair.]

APPENDIX

ADDITIONAL SUBMISSIONS FOR THE RECORD

Statement of
American Association of
Exporters and Importers

on

S. 2167 - The Unfair Foreign
Competition Act of 1982

and

S. 2517 - The Unfair Foreign
Competition Act of 1982

These comments in opposition to S. 2517 and S. 2167 are submitted on behalf of the American Association of Exporters and Importers, (AAEI), a not-for-profit organization composed of over 1300 American firms directly involved with the exportation of American made merchandise, and with the importation and distribution of goods produced outside the United States. Its membership is primarily importers, exporters, wholesalers, retailers and manufacturers, and also includes customs brokers, attorneys, banks and others connected with foreign trade. AAEI members range in size from small companies to some of the largest American corporations. All member firms must be incorporated in the United States or be controlled by American citizens.

S. 2517 and S. 2167 would radically change section 801 of the Act of September 8, 1916, commonly known as the Antidumping Act of 1916. As presently constructed, the 1916 Act makes it a misdemeanor, punishable by a fine not exceeding $5,000 and

imprisonment not exceeding one year, to commonly and systematically import articles into the United States at a price substantially less than the price at which such articles are sold in the country of production, provided such acts are done with the intent of injuring a United States industry, preventing its establishment or restraining or monopolizing trade. This Act complements the antidumping provisions of the Trade Agreements Act of 1979, designed to be remedial and not punitive in nature, by eliminating the requirement of intent and allowing companies to avoid paying additional dumping duties by adjusting prices to remove, in the future, any discrimination that may have existed between markets.

Taken together, these two laws are already more than sufficient to "protect" American industry from any perceived harmful effect of a foreign company selling merchandise in the United States at prices below those in effect in the home market. If enacted into law, S. 2517 and S. 2167 would result in totally unfair discrimination against imports as opposed to domestically produced products, would subject United States exports to similar unwarranted retaliatory actions by our major trading partners, would violate United States obligations under the General Agreement on Tariffs and Trade, and would materially injure United States consumers without helping those American industries which these measures are ostensibly intended to protect.

First, imports (and importers and exporters) are subject to the antitrust laws of the United States. Violations of the antitrust laws in the import trade are neither more nor less violations because foreign, rather than just interstate, commerce is involved. The AAEI does not suggest that importers be exempt from U.S. antitrust laws. We assert, however, that there is no need for any difference in the application of the antitrust laws to goods of foreign origin and goods of U.S. origin. Thus, in our view, there is no need for bills such as

S. 2517 or S. 2167 nor for the statute that they would amend, nor for other statutes that regulate competition or imports simply because they are imports in a manner that differs from regulation of domestic goods. In our view, such discriminatory statutes amount to a violation of the international obligations of the United States, particularly the General Agreement on Tariffs and Trade and the International Antidumping Code.

More fundamentally, however, enactment of either S. 2517 or S. 2167 would perpetuate and expand the already existing unfair statutory burden imposed upon imports by the antidumping laws of the United States, thereby inviting our major trading partners to impose similar draconian impediments to American made goods sold abroad. A brief review of these measures demonstrate that they are totally inconsistent with basic principles of American law.

Section 3(a) of S. 2167 would subject any person who imports, assists in importing, or sells a foreign made article in the United States at a price less than the foreign market (or constructed value) of the article to a fine of $1,000,000 and imprisonment of one year. Thus, an American retailer who purchased his merchandise from an American wholesaler who in turn bought the product from an American importer could be imprisoned for a year merely because the foreign manufacturer may have sold the merchandise to the importer at less than the prevailing price in the country of exportation. But how is the retailer to know what the foreign manufacturer's price to the importer is? Certainly, this Committee does not expect the retailer, wholesaler, importer and foreign manufacturer to sit down and discuss their respective costs and selling prices in order to ensure that they are not in violation of S. 2167.

However, S. 2167 does not merely place on a U.S. businessman the intolerable burden of having to predict the selling prices and costs of all parties in the foreign and export chan-

nels of distribution, it requires that the businessman prove that he did not know he was violating the law. Section 3(d) of S. 2167 provides that a preliminary or final determination by the Commerce Department of sales at less than fair value (LTFV) or a preliminary or final determination of material injury by the U.S. International Trade Commission in a proceeding conducted pursuant to the antidumping provisions of the Trade Agreemets Act of 1979 is a prima facie violation of law which places "the burden of rebutting the prima facie case thus made ....upon the person charged with the violation of this section." This reversal of the burden of proof raises serious due process questions and indicates an indifference to equity and fairness not in keeping with the basic tenets of our legal system. It completely misconstrues the purpose of the antidumping provisions of the Trade Agreements of 1979, which allows an importer to adjust to its prices after it is discovered that inadvertent sales at less than fair value may have occurred in the past. And in reversing the burden of proof based solely on a preliminary determination of LTFV or reasonable indication of injury, (which results are often based on allegations in a complaint and are often reversed in a final determination when more information is available), it allows a domestic producer to completely destroy an importer's business relationship by merely threatening to file an antidumping complaint with the Commerce Department. Surely, no American retailer, wholesaler, or importer should be faced with this intolerable burden.

Like its counterpart, S. 2517 also is based on the provisions of law contained in the Trade Agreements Act of 1979. This bill provides that a violation can be found to exist where merchandise is sold in the United States at a price substantially less than "the constructed value of such articles as determined by the standards set forth in Section 773(e) of the

Trade Agreements Act of 1979." Section 773(e) of that law provides that constructed value equals the sum of the cost of materials, cost of fabrication, and an amount for general expenses and profit, equal to the general expenses and profit usually reflected in sales of the same class of merchandise in the country of exportation, except that the amount for general expenses has to be at least 10 percent of the costs of materials and fabrication, and the amount for profit "should not be less than 8 percent of the sum of such general expenses and cost."

While it is our opinion that the 10 and 8 percent limitations are unwarranted even in the context of the Civil Law, they are totally unjustifiable in a law wherein a violator can be imprisoned. Surely, no company official should be faced with spending time in jail because he knows that a manufacturer is making less than a profit of 8 percent on sales of goods to the United States.

S. 2517 also provides that a violation can be found if imported merchandise sold at less than fair value would "cause material injury to an industry or labor in any line of commerce in any section of the United States." (Emphasis added). Clearly a businessman should not be expected to know the country of origin of each and every component part of the merchandise he purchased, and should not be faced with having to defend himself in a lawsuit merely because an American components part producer has lost sales because of the importation of a finished article containing a particular part produced abroad.

Other provisions of both S. 2517 and S. 2167 are equally onerous. Rather than provide a detailed discussion of each provision in these brief comments, it is sufficient to state that we doubt if any American businessman would support such a measure if it were made to apply to merchandise he desired to export to a foreign country, or sell in other areas in the

United States. And if the United States is truly desirous of increasing our export trade, we should not provide our trading partners with an excuse (which in this case would probably be justifiable) to impose severe restraints on goods made in the United States.

Moreover, both of these measures violate the international antidumping agreement which forms the basis of our antidumping laws. In signing the international antidumping code, the United States expressly recognized that

> anti-dumping practices should not constitute an unjustifiable impediment to international trade and that anti-dumping duties may be applied against dumping only if such dumping causes or threatens material industry to an established industry or materially retards the establishment of an industry.

The containment of the use of antidumping practices, to prevent their abuse as a non-tariff barrier to trade, has been a major objective of our trading partners for nearly 20 years. They have bought and paid for American agreement to limit these practices in major rounds of GATT trade negotiations. It strains the multilateral trading system perhaps beyond repair for the United States Congress to blithely undo an agreement reached in 1979 by passing this proposed legislation.

The AAEI supports the principle of a "free and fair" trading system throughout the world. If enacted, S. 2517 and S. 2167 would impose severe unwarranted penalties on American imports, would invite retaliation to American exports, and would have an inflationary impact on American consumers. It would not serve its intended purpose of helping U.S. industry to compete in the world marketplace. These bills should not be enacted into law.

STATEMENT OF SMITH-CORONA

PRESENTED BY GEORGE F. BURNS

BEFORE THE

SUBCOMMITTEE ON INTERNATIONAL TRADE

OF THE COMMITTEE ON FINANCE

UNITED STATES SENATE

May 6, 1982

Good afternoon. My name is George Burns. I am president of SCM Corporation's Consumer Products division. Smith-Corona typewriters is the largest part of that division.

Smith-Corona greatly appreciates and welcomes the opportunity to bring the Congress up to date on the continued illegal dumping of portable electric typewriters from Japan, and the devastating impact of that dumping on the domestic portable typewriter industry.

Mr. Chairman, this may be the last gasp of a dying industry, strangled by its own government's bureaucracy. A few days ago, the Court of International Trade in New York City confirmed that the Commerce Department has vast discretionary authority to interpret the antidumping law. They have exercised that authority in a way that flies in the face of congressional intent. As an American businessman, I simply refuse to believe that the U.S. Congress intended that technologically-advanced, innovative U.S. industries should collapse or that skilled, dedicated U.S. workers should lose their jobs while bureaucrats toy with formulas to the benefit of foreign companies that bend our laws to their advantage.

Let me stress at the outset that I recognize that dumping is not the subject of this hearing. But our problem has existed for nearly a decade without a shred of evidence that anyone in the government cares. It is an example of the kind of unfair trade practice that has led to the demands for reciprocity this Committee is considering.

A reciprocity bill might benefit many American industries, but because of the limited size of the Japanese typewriter market, it would not help Smith-Corona. What will help our industry and others faced with dumping is more effective enforcement by the Commerce Department of the trade laws already enacted.

The U.S. portable typewriter industry once employed some 20,000 workers in the Northeastern states. Of the well-known names Royal, Remington, Underwood and Smith-Corona, only Smith-Corona survives, and our position is increasingly threatened.

At one time, Smith-Corona employment in the Cortland, New York area was over 5,000. At the beginning of 1981, it was around 4,000. Over the course of 1981, 600 Smith-Corona typewriter workers lost their jobs. An important reason was the dumping of an increasing flood of portable typewriters from Japan.

This is not just our opinion. Agencies of the U.S. government found in three separate investigations between 1974 and 1980 that sales of these imports were being made at less than fair value.

We first saw Japanese portables being dumped in this country in the early 1970's. In 1973, we asked the Treasury Department to investigate. Treasury found that Japanese portables were indeed being dumped in the United States.

In 1975, the International Trade Commission held a hearing. When the Justice Department came to the hearing to argue on behalf

of the Japanese, we began to understand the kind of problem we faced. The ITC ruled, 3-2, that even though Japanese suppliers had substantially penetrated the market, there was no injury because Smith-Corona was still profitable.

It seems you have to go out of business before you get anyone's attention.

After the ITC's "dumping but no injury" ruling, imports showed an immediate and dramatic increase. Between 1976 and 1978, annual imports of Japanese-made portables more than doubled to over 500,000 units.

In 1979, Smith-Corona again asked the Treasury Department to investigate. And again, Treasury determined that Japanese made electric portables were being sold here at less than fair value. This time the dumping margins were enormous: 48 per cent for the largest Japanese supplier, 37 per cent on average for all Japanese suppliers.

At last, in April 1980, the ITC ruled unanimously that the United States industry, consisting solely of Smith-Corona, had suffered injury as a result of the dumping. They could hardly have ruled otherwise in the face of reduced employment, lower production, lower sales and substantially lower profits. In May, the government issued an Antidumping Duty Order.

We thought we might finally see an end to the dumping and the beginning of fair competition.

But the Japanese avoided that prospect when they immediately asked for and got, from the Department of Commerce's International Trade Administration, a "quick" reinvestigation of dumping margins. They were able to do this under a new provision of the Trade Agreements Act, a statute Congress thought would expedite the process, not raise another hurdle for U.S. business.

In August 1980, Commerce made the astounding finding that during the reinvestigation period (January-April 1980), the dumping margins on the Japanese imports had been virtually eliminated. For example, the margins for the largest importer were somehow reduced from 48% to 4%, even though U.S. prices for the Japanese models were basically unchanged during the period under investigation.

Having once more avoided the remedy for their ongoing violations, in 1981, in the teeth of the recession, imports of Japanese portables reached 659,000 -- a 29 per cent increase over 1980. And the dumping continued.

In December of 1981, we had the privilege of presenting testimony on this subject before the Trade Subcommittee of the House Ways & Means Committee.

Since then, our sales of American made portables have continued to drop in the face of the continued dumping and the recession. In 1982, we found it necessary to lay off another 200 people in Cortland and to close typewriter plants in Scotland and Canada.

Now we are awaiting the results of the Commerce Department's annual review and determination of new dumping margins on the imports of Japanese portables. The results are due soon and they are critical to the future of our industry.

Sadly, the government's rulings that our Japanese competitors have been violating U.S. law were not enough to restore fair competition. Those rulings only got us by the first few hurdles. There are no penalties for our past injury. And there may be little or no penalty at all. After dumping was found, the accountants and lawyers for the Japanese made numerous claims for "adjustments" to the actual Japanese prices for differences in relative costs between sales made in the U.S. and sales made in Japan.

These accounting claims were "verified" and accepted by Commerce Department employees at the headquarters of the Japanese companies with representatives of MITI looking on. Smith-Corona was not permitted to attend these sessions. Our own evidence was rejected by Commerce.

The effect of the accounting adjustments is to reduce or eliminate the dumping margins without any changes in actual prices in the marketplace. A law that was supposed to measure and correct price discrimination has become a game of clever accounting enabling importers to explain away dumping margins.

To make matters worse, Commerce Department employees, as a matter of policy, exercise broad discretion to interpret their regulations in ways that are favorable to the importers. We believe that some of these interpretations surely do not reflect the intent of Congress because their effect has been the near destruction of American industries and the loss of thousands of American jobs.

Somehow, I just can't imagine that if my company was convicted of violating Japanese law, the Japanese government would ever be making discretionary interpretations to help me avoid Japanese legal remedies and thereby cause the loss of thousands of Japanese jobs.

Last week, as mentioned earlier, a Federal Court ruled that the Commerce Department has broad discretion to interpret the law. From our experience, the bureaucrats in the Commerce Department who are exercising this life and death power have not used the law to defend American industry from illegal foreign competition, as Congress intended, but have instead acted to shield foreign industry from paying the dumping duties that would restore fair competition.

During the floor debate in the Senate on the 1979 trade bill Senator Moynihan said, "I support it on the condition that the pledges made by the administration that American workers' jobs will be protected from unfair and often dishonest dealing will be kept". Alot of Smith-Corona people don't have jobs today because those pledges have not been kept. We would, therefore, like to submit proposals to help correct this situation for the Committee's consideration.

Mr. Chairman, it is awfully late in the day for Smith-Corona.

If our industry follows the television industry and others, it will be a clear signal to other companies, here and abroad, that we don't care about meaningful enforcement of our laws governing unfair trade. Our industry's vitality has been sapped by a decade of illegal dumping without effective government intervention. If this industry is allowed to go, as the direct result of proven violations of American law, the message is clear. And others will surely follow.

This is an industry where the Japanese have had no edge in technology or quality. Smith-Corona survived because it was the inventor of the portable electric typewriter and the industry's technological leader. We have modern, efficient manufacturing facilities and a skilled and dedicated workforce which gave us manufacturing costs that rivaled the Japanese even with their lower paid workers.

We chose to have faith that the laws of this nation would be enforced. The result has been burdensome and costly legal proceedings; success in establishing violations but failure in obtaining relief; and continuous, ruinous dumping.

I am going to retire next year. Occasionally somebody asks why I care what happens to this small industry after I'm gone. But I do care because I continue to believe that we could win this fight, hands down, if everybody played by the rules. So I care. I care as an employer because thousands of people have given their working lifetimes to this industry. And I care as an American because we, as a nation, could do better.

AKIO MORITA
CHAIRMAN
CHIEF EXECUTIVE OFFICER

SONY
SONY CORPORATION

7-35 KITASHINAGAWA-6
SHINAGAWA-KU, TOKYO 141, JAPAN
TELEPHONE: (03) 448-2000
CABLE ADDRESS:
SONYCORP TOKYO
TELEX: J 28000

August 18, 1982

The Honorable Strom Thurmond
Chairman, Committee on the Judiciary
United States Senate
2226 Dirksen Senate Office Building
Washington, D.C. 20510

Re: S.2167, A Bill to Amend the Antidumping Act of 1916

Dear Mr. Chairman:

I am writing to express my concern about S.2167, a bill to amend the Antidumping Act of 1916 which is currently pending before your Committee. The bill would expose importers to the payment of money damages and to a ban against importation of their merchandise if they are included in dumping findings that are issued by the Commerce Department in administrative antidumping investigations. With all respect, I would like to register my strong opposition to the bill.

Please understand that I certainly do not favor unfair import practices. My company, Sony, has been in the American market for over 30 years, and we have worked hard to establish a reputation for quality and integrity. Also, I am not speaking only as the chairman of a Japanese company that exports to the United States. Sony has a major stake in the American economy. We have invested millions of dollars in U.S. plants and are employing about six thousand American workers. Today about 80 percent of all the Sony televisions sold in the United States are made in America using American components and American labor.

I oppose S.2167 because I believe that it is unnecessary and unfair. Passage of this bill would not solve the real problems of U.S. companies that are suffering from foreign competition, and it might only serve to divert management attention from the real tasks of improving productivity and quality control. The bill would only produce more lawsuits -- not more jobs. I am sure you will agree that the American legal system does not suffer from any shortage of litigation. I fear that passage of the bill would only encourage the tendency of some American companies to engage in legal harassment of their foreign competitors.

I understand that your Committee has held several hearings on S.2167 and a similar bill, S.2517. At the June 24 hearing the Assistant Secretary of Commerce for Trade Administration and the General Counsel of the Office of the U.S. Trade Representative testified that these bills are unnecessary because domestic producers can already get adequate relief under current law, and they also pointed out that the bills may violate the International Antidumping Code. This testimony raises serious

legal and policy concerns which merit close attention by your Committee. I also think these bills, S.2167 and S.2517, are unnecessary. I would like to focus on S.2167 to present my arguments here. I am particularly concerned about the provision in S.2167 which incorporates administrative antidumping determinations into the Antidumping Act of 1916 and makes importers subject to severe sanctions under the 1916 Act if they are included in antidumping findings under the Trade Agreements Act of 1979.

S.2167 permits the recovery of damages from importers and a prohibition against imports without any proof of predatory intent. The bill defines dumping in the same terms as the antidumping provisions of the Trade Agreements Act of 1979, and it provides that a final determination of sales at less than fair value by the Commerce Department or of injury by the International Trade Commission in an administrative antidumping proceeding will constitute evidence of a violation of the amended Antidumping Act of 1916. After the Commerce Department or International Trade Commission decision is made the Court can prohibit the importation or sale of the articles concerned until the completion of the suit, and the defendant will have the burden of proving that he has not violated the law. In my opinion, such severe penalties for what could very well be unintentional acts have no place in the American system of justice.

The drafters of the bill may have been under the impression that foreign producers and importers can easily determine whether they are selling at dumping prices. That is simply not true. The law and the regulations are extremely complex and are subject to shifting interpretations. Many of the critical judgments under the antidumping law are left to the discretion of the Commerce Department and the International Trade Commission, and rulings on those issues cannot be predicted with any certainty in advance.

For example, the difference between a price that is considered "fair" and one which is considered "unfair" may depend entirely on whether Commerce considers an expense incurred in home market transactions to be "directly related" to the sale of the merchandise in the home market or to be "an overhead expense." If it is the former, the expense will be deducted in the calculation of fair value; if it is the latter, it will not. Whether or not the expense is deducted can make all the difference in the Commerce Department's determination of whether the prices for exportation to the United States are above or below fair value. Yet a foreign producer must take all expenses into account in setting his home market and export prices, whether those expenses are "directly related" or "overhead," and he cannot be expected to predict U.S. Government rulings on such technical distinctions before an investigation is instituted.

Antidumping rulings are particularly unpredictable during a period of fluctuating exchange rates. A price which is at fair value can be transformed into a dumping price merely because of a decline in the value of the dollar relative to the foreign currency.

It is often impossible to predict exchange rate movements or to adjust prices quickly enough to avoid being placed in a dumping position because of exchange rate fluctuations. (The Commerce Department allows only a 45-day grace period.) It is bad enough that importers who cannot adjust their prices in time may have to pay dumping duties merely because of a currency change. It

is unconscionable to also ban their imports and to require them to pay damages for matters over which they have no control.

America's trading partners have frequently complained about the unpredictable and technical nature of calculations under the U.S. antidumping law and the exposure of foreign producers to harassment through litigation. This matter was analyzed in the January 1981 report of the Japan-United States Economic Relations Group (the so-called "Wisemen's Group"). The report demonstrates the unfairness of imposing retroactive penalties in addition to antidumping duties. It described the unpredictability of antidumping rulings in the following terms:

> "There is a tendency in the United States, especially in Congress, to believe that a clear dividing line can be drawn between "fair" and "unfair" trade practices which can be readily determined by the administering authorities. In fact, the existence of "dumping," "subsidies," and other alleged "unfair trade practices" is often extremely difficult to establish, and it is all the more difficult to set appropriate margins of relief. Variations in products betwen home market and foreign markets, in manufacturing processes, in business practices, in taxation systems, and the like, do not permit the kind of precision on which the American laws are premised." (page 93)

But it went on to point out that this unpredictability is not a serious problem because the law is prospective.

> "Foreign manufacturers often cannot determine in a technical sense whether or not they may be dumping, but since the laws are prospective, if foreign manufacturers have mistakenly believed they were not dumping, but are found to be dumping, they can comply and will suffer no penalty." (Id.)

In other words, the saving grace of the administrative antidumping law is its prospective nature. S.2167 would eliminate that saving grace and would make the law retroactive and penal. It would not clarify the uncertainties, nor would it provide any exception for companies that were acting in good faith. Any company that finds itself caught in a dumping finding would be subject to a ban on imports and the payment of money damages, no matter how technical and unpredictable the ruling or how much the determination was affected by currency fluctuations beyond its control. I believe that such a result is completely inequitable.

In addition, passage of the bill would be an open invitation to legal harassment. Almost every antidumping petition that is filed with the Commerce Department would be accompanied by a lawsuit filed in a U.S. District Court under the amended Antidumping Act of 1916. As soon as the Commerce Department finds sales at less than fair value the plaintiff would get a court order excluding his foreign competitors from the American market until the conclusion of the lawsuit, which could drag on for years. (The bill does not even require a finding of injury by the International Trade Commission before the imports can be excluded.) Plaintiffs would be tempted to file broad complaints so that the exclusion order would cut off as much competition as possible and the ultimate damage award would be magnified by the number of defendants ensnared. They might name every foreign

producer of competing products in petitions under the Trade Agreements Act of 1979 and in lawsuits under the Antidumping Act of 1916, whether or not there is any real evidence of dumping against each of them, hoping that technical rulings or currency fluctuations would ensnare the "innocent" with the "guilty."

This is no exaggeration. I know whereof I speak, since Sony was unjustly included in the finding of dumping that was issued on Japanese television sets in March 1971, even though Sony's prices were the highest in the American market, and even though Sony was cleared of dumping charges during the fair value investigation. Sony was included because the Treasury Department had adopted the policy of issuing all findings of dumping on a country-wide basis. It took four more years to persuade the Treasury Department to exclude Sony from the dumping finding, and even then Sony had to go through more years of investigation and bureaucratic confusion over the liquidation of entries that were made up to the date of Sony's exclusion. What is worse, the fact that Sony was erroneously included in the original dumping finding led to its being named as a defendant in a lawsuit that was filed under the Antidumping Act of 1916 and the antitrust laws. After ten years of litigation the complaint against Sony was finally dismissed in 1981 when the court affirmed Sony's longstanding position that it has never engaged in illegal price-fixing tactics and in fact has always sold its televisions in a fair and legal manner in the Unitd States. The case is now under appeal. If S.2167 had been in the law at that time, Sony could have been prohibited from importing television sets during the entire ten years of the case merely because it was included in the original dumping finding.

There is a real risk that such an injustice could occur if this bill is enacted. The Commerce Department regulations permit exclusion of an individual foreign producer from an affirmative determination only if <u>all</u> of the company's exports to the United States during the period under investigation were made at fair value prices. Even a single sale at a small margin is enough to bring a company within an affirmative determination. If the company does not qualify for exclusion from the original finding, it can revise its prices to eliminate dumping margins and can be excluded later if it can demonstrate that it has made no sales at less than fair value for at least two years after the finding is issued. But all of this would be to no avail if S.2167 were enacted. Such a company would be subject to a court order excluding its merchandise from the United States during the pendency of a lawsuit which could last many years, and it might ultimately have to pay damages to one or more domestic manufacturers.

I appreciate the opportunity to present my views on this legislation, and I hope that my comments will help to point out the serious problems with S.2167. Despite all of the trials and tribulations of U.S.-Japan economic relations, I have always had faith in the essential fairness of the American legal system. I trust that the Committee will recognize the unfairness of S.2167, and will ensure that such legislation is not enacted into law.

With best regards,

Sincerely yours,

Akio Morita

County of Allegheny

Board of County Commissioners

Pittsburgh, Pennsylvania

Resolution

WHEREAS, the County of Allegheny is one of the leading Counties in the United States in the production of steel; and

WHEREAS, the production of steel not only provides jobs for our citizens, but also affects the livelihood of millions of Americans as well; and

WHEREAS, it is of prime concern that foreign nations substantially have increased their steel production capacity through extensive subsidization, and have directed their steel shipments to the United States, the only free market in the world; and

WHEREAS, this illegal procedure has had a disastrous effect on operating levels and employment in the American steel industry, causing steel capacity to drop to 50 percent this month, and forcing 127,000 steelworkers to be laid off their jobs, or limited to a reduced work schedule; and

WHEREAS, local government officials have joined industry and labor leaders in urging an end to the influx of foreign steel;

NOW, THEREFORE, BE IT RESOLVED that this Board of County Commissioners does hereby once again call to the attention of our Federal Government the fact that basic steel is an essential industrial material and a strategic resource necessary to our national defense;

AND, BE IT FURTHER RESOLVED that we urge the establishment of quotas to control steel imports to the United States, and to impose steel import limitations under provisions of the Trade Act of 1974, and thus rightfully end this unfair and illegal practice that is strangling our domestic steel industry.

AND, Resolved that copies of this Resolution be forwarded to the President of the United States, our two U. S. Senators, and the Congressional Delegation from Allegheny County.

RESOLVED and ENACTED this *20th day of May, 1982*

COUNTY OF ALLEGHENY

By _____

_____

_____

Board of County Commissioners

APPROVED:

_____

Chief Clerk

RESOLUTION

WHEREAS, the steel industry in Jefferson County, Alabama has been heavily damaged by foreign steel imports; and

WHEREAS, shutdowns of steel plants and related facilities, including United States Steel Corporation, have brought economic tragedy to thousands of families who are affected by unemployment in this County; and

WHEREAS, existing fair trade enforcement against subsidized foreign steel importation is administratively slow and has failed to provide adequate relief to American steel producers; and

WHEREAS, United States Senator Howell Heflin of Alabama has proposed a speedy Federal Court remedy for dealing with the dumping of foreign steel in our country.

NOW, THEREFORE, BE IT RESOLVED that the Jefferson County Commission does strongly endorse passage of an effective and speedy measure for dealing with the problem of foreign steel imports, and endorses the proposal of Senator Howell Heflin.

BE IT FURTHER RESOLVED that a copy of this Resolution be delivered to Senator Howell Heflin for submission to the United States Senate Committee hearings on said proposed legislation.

Signed at the Jefferson County Courthouse in Birmingham, Alabama, this the eighteenth day of May, nineteen hundred and eighty-two.

President

Associate

Associate

O F F I C I A L

BOROUGH OF LIBERTY

RESOLUTION NO. 1982-10

A RESOLUTION OF THE BOROUGH OF LIBERTY, COUNTY OF ALLEGHENY, COMMONWEALTH OF PENNSYLVANIA, TO MEMORIALIZE THE PRESIDENT OF THE UNITED STATES AND THE CONGRESS TO IMPOSE STEEL IMPORT LIMITATIONS UNDER THE PROVISIONS OF THE TRADE ACT OF 1974

WHEREAS, Basic Steel is an essential industrial material and, therefore, the domestic industry is a strategic resource necessary to national defense; and

WHEREAS, the United States can, and must, maintain an adequate level of self-sufficiency and production capability in basic steel, including a skilled and adequate labor force; and

WHEREAS, the economic base of the basic steel industry has been seriously eroded in recent years by the damaging flow of imports of steel and products containing these materials; and

WHEREAS, under pressure of excessive imports, unemployment has climbed as high as forty percent in the steel industry during recent years; and

WHEREAS, American privately-owned steel producers compete in the marketplace with foreign companies which are governmented owned, subsidized, or directed and do not have to meet the disciplines of our free-market system; and

WHEREAS, the steel industry has always favored development of open, fair, and mutually beneficial world trade; it is not protectionist; and

WHEREAS, the problem of assuring that foreign companies compete fairly and legally confronts the steel industry, many

other industries, and our entire economy. As the major open-world market, our Nation faces industrial stagnation, reduced job opportunities, and a declining standard of living, unless new understandings and rules relating to trade can be developed with foreign governments; and

WHEREAS, the steel industry is experiencing massive lay-offs due to the unfair dumping of foreing steel.

NOW, THEREFORE, be it Resolved and Adopted by the Council of the Porough of Liberty, County of Allegheny, Commonwealth of Pennsylvania, and it is hereby Resolved and Adopted by authority of the same, that:

1. That the General Assembly of the Commonwealth of Pennsylvania memorialize the President of the United States and the Congress to impose steel import limitations under the provisions of the Trade Act of 1974.

2. That copies of this Resolution be transmitted to the President of the United States, the President of the United States Senate, the Speaker of the House of Representatives and each Senator and Representative in Congress from Pennsylvania.

Resolved and Adopted by the Council of the Borough of Liberty, County of Allegheny, Commonwealth of Pennsylvania, meeting in regular and public session, this 1st day of June, 1982.

ATTEST:

Chrissie A. Schampel
Chrissie A. Schampel
Secretary

BOROUGH OF LIBERTY

By John J. Cooper
John J. Cooper
President of Council

Resolution No. 494

WHEREAS, the City of Pittsburgh recognizes that the American Steel Industry is the backbone of our national defense; and

WHEREAS, the steel industry is the dominating force in the economy of the Tri-State Region; and

WHEREAS, steel imports have had a devastating effect on employment in the industry causing five local steel mills to lay off approximately 14,000 employees; and

WHEREAS, the steel industry has always favored the development of open, fair, and mutually beneficial world trade, it does not support nor feel it equitable, a policy which requires American steel producers to compete in this country with foreign steel producers which receive substantial assistance from their governments; and

WHEREAS, while we value highly our trade with foreign nations, it is the feeling of the Council of the City of Pittsburgh that the United States Government should develop a policy of steel import limitations which allows domestic steel producers to compete fairly in the American marketplace.

NOW, THEREFORE,

BE IT RESOLVED, that the Council of the City of Pittsburgh memorialize the President of the United States and Congress to impose steel import limitations under the provisions of the Federal Trade Act of 1974; and

BE IT FURTHER RESOLVED, that copies of this resolution be transmitted to the President of the United States, the President of the United States Senate, the Speaker of the House of Representatives and each Senator and Representative in Congress from Pennsylvania, and the Congressional Steel Caucus.

In Council May 24 1982, *Read and adopted.*

Robert Rade Stone
Pro-Tem PRESIDENT OF COUNCIL

Attest: Michael Perry
CLERK OF COUNCIL

Recorded in Resolution Book, Vol. 116 *Page* 723, 24th
day of May 1982

WHEREAS, the County of Washington relies heavily on the steel industry for employment of its citizens.

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WHEREAS, the employment level of the two leading steel producers in Washington County has fallen below 50 percent and another has reduced the work week by 20 percent;

WHEREAS, the production of steel not only provides jobs for our citizens, but also affects the livelihood of millions of Americans as well; and

WHEREAS, it is of prime concern that foreign nations substantially have increased their steel production capacity through extensive subsidization, and have directed their steel shipments to the United States, the only free market in the world; and

WHEREAS, this procedure has had a disastrous effect on operating levels and employment in the American steel industry, causing steel capacity to drop to 50 percent this month, and forcing 127,000 steelworkers to be laid off their jobs, or limited to a reduced work schedule; and

WHEREAS, local government officials have joined industry and labor leaders in urging an end to the influx of foreign steel;

NOW, THEREFORE, BE IT RESOLVED that this Board of County Commissioners does hereby call to the attention of our Federal Government the fact that basic steel is an essential industrial material and a strategic resource necessary to our national defense;

AND, BE IT FURTHER RESOLVED that we urge the establishment of quotas to control steel imports to the United States, and to impose steel import limitations under provisions of the Trade Act of 1974, and thus rightfully end this unfair practice that is strangling our domestic steel industry.

AND, Resolved that copies of this Resolution be forwarded to the President of the United States, our two U. S. Senators, and our Congressional Representative from Washington County.

ENACTED by RESOLUTION this 10th day of June , 1982

COUNTY OF WASHINGTON

By Virginia L. Mazzara

Edward M. Palmer

Board of County Commissioners

Christine A. Dallaston
Chief Clerk

OFFICIAL

BOROUGH OF WEST MIFFLIN
ALLEGHENY COUNTY, PENNSYLVANIA

RESOLUTION NO. 513

A RESOLUTION OF THE BOROUGH OF WEST MIFFLIN REQUESTING THE PRESIDENT OF THE UNITED STATES AND CONGRESS OF THE UNITED STATES TO CONSIDER IMPOSITION OF STEEL IMPORT LIMITATIONS UNDER THE PROVISIONS OF THE TRADE ACT OF 1974.

WHEREAS, basic steel is an essential industrial material and, therefore, the domestic industry is a strategic resource necessary to national defense; and,

WHEREAS, the United States can, and must, maintain an adequate level of self-sufficiency and production capability in basic steel, including a skilled and adequate labor force; and,

WHEREAS, the economic base of the basic steel industry has been seriously eroded in recent years by the damaging flow of imports of steel and products containing these materials; and,

WHEREAS, under pressure of excessive imports, unemployment has climbed as high as forty percent in the steel industry during recent years; and,

WHEREAS, American privately-owned steel producers compete in the marketplace with foreign companies which are government-owned, subsidized, or directed and do not have to meet the disciplines of our free-market system; and,

WHEREAS, the steel industry has always favored development of open, fair, and mutually beneficial world trade; it is not protectionist; and,

I hereby certify that the foregoing is a true and correct copy of the Original Ordinance as passed by Council of the Borough of West Mifflin at a meeting held on May 20, 1982 -1-

Theresa Corso
Secretary of the Borough,

WHEREAS, the problem of assuring that foreign companies compete fairly and legally confronts the steel industry, many other industries, and our entire economy. As the major open-world market, our Nation faces industrial stagnation, reduced job opportunities, and a declining standard of living, unless new understandings and rules relating to trade can be developed with foreign governments; and,

WHEREAS, the steel industry is experiencing massive layoffs due to the unfair dumping of foreign steel.

NOW, THEREFORE, BE IT RESOLVED by Council of the Borough of West Mifflin in meeting assembled and it is hereby resolved by authority of the same as follows:

SECTION 1. That Council of the Borough of West Mifflin memorializes the President of the United States and the Congress to impose steel import limitations under the provisions of the Trade Act of 1974.

SECTION 2. That copies of this Resolution be transmitted to the President of the United States, the President of the United States Senate, the Speaker of the House of Representatives and each Senator and Representative in Congress from Pennsylvania.

RESOLVED and ADOPTED this 20th day of May, 1982.

ATTEST:

Theresa Corso

Theresa Corso, Secretary

BOROUGH OF WEST MIFFLIN

By George B. Miklos

George B. Miklos, President

Examined and approved this 27th day of May, 1982.

By Peter W. Richards

Peter W. Richards, Mayor

REC'D JUN 9 - 1982

RESOLUTION NO. 15-82

A RESOLUTION OF THE TOWNSHIP OF WILKINS REQUESTING THE IMPOSITION OF LEGISLATION TO LIMIT STEEL IMPORTS.

WHEREAS, Basic steel is an essential industrial material and, therefore, the domestic industry is a strategic resource necessary to National Defense; and

WHEREAS, the United States can, and must, maintain an adequate level of self-sufficiency and production capability in basic steel, including a skilled and adequate labor force; and

WHEREAS, the economic base of the basic steel industry has been seriously eroded in recent years by the damaging flow of imports of steel and products containing these materials; and

WHEREAS, Under pressure of excessive imports, unemployment has climbed as high as forty percent in the steel industry during recent years; and

WHEREAS, American privately-owned steel producers compete in the marketplace with foreign companies which are government owned, subsidized, or directed and do not have to meet the disciplines of our free-market system; and

WHEREAS, The steel industry has always favored development of open, fair, and mutually beneficial world trade; it is not protectionist; and

WHEREAS, The problem of assuring that foreign companies compete fairly and legally confronts the steel industry, many other industries, and our entire economy. As the major open-world market, our Nation faces industrial stagnation, reduced job opportunities, and a declining standard of living, unless new understandings and rules relating to trade can be developed with foreign governments; and

WHEREAS, the steel industry is experiencing massive layoffs due to the unfair dumping of foreign steel; therefore, be it

RESOLVED that the Board of Commissioners of the Township of Wilkins request the President of the United States and the Congress to impose steel import limitations under the provisions of the Trade Act of 1974; AND BE IT FURTHER

RESOLVED, THAT COPIES OF THIS RESOLUTION BE TRANSMITTED TO THE PRESIDENT OF THE UNITED STATES, THE PRESIDENT OF THE UNITED STATES SENATE, THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND EACH SENATOR AND REPRESENTATIVE IN CONGRESS FROM PENNSYLVANIA.

RESOLVED AND ADOPTED by the Board of Commissioners of the Township of Wilkins at a duly assembled meeting held this first day of June, 1982.

TOWNSHIP OF WILKINS

By Joseph J. Dombrosky
Joseph J. Dombrosky
President,
Board of Commissioners

ATTEST:

Wilmer K. Baldwin
Wilmer K. Baldwin, Secretary

City of Pittsburgh
Richard S. Caliguiri, Mayor

June 3, 1982

The Honorable Arlen Specter
United States Senator
342 Russell Building
Washington, DC 20510

Dear Senator Specter:

Due to commitments that were made some weeks ago, I was not able to testify before the Senate Judiciary Committee with respect to Senate Bill 2167.

I believe the proposals contained in your legislation will have a significant positive impact in reducing the dumping of foreign steel and the preservation of the steel industry jobs. Direct access to the Federal court system as proposed in your legislation will definitely shorten the time period in which a determination can be made with respect to the dumping of foreign steel.

The current process of determining foreign dumping through the International Trade Commission and the Department of Commerce is too cumbersome and too long. In reality, it provides no relief whatsoever to the many unemployed steelworkers. If we are going to make any progress in restoring the steel industry in Pittsburgh and in the United States, legislation such as Senate Bill 2167 must be enacted.

I know that you are aware of the current condition of the steel industry in the Pittsburgh area and the impact that foreign imports have had on the local economy. The steel industry in general is operating only at less than 50 percent capacity with approximately 127,000 persons either laid off or on a short work week. At J & L's Pittsburgh Works, the new electric furnaces are not operating at all and approximately 40 percent of the work force is laid off. Furthermore, there is the impact on the suppliers to the steel industry. Conservatively for every one steelworker laid off, 2 to 3 employees in those industries who supply the steel industry are unemployed.

It is my belief that foreign imports have had a significant impact on the loss of jobs in the steel industry in recent years. In 1975, approximately 14 percent of the steel used in the United States was imported. Today almost 23 percent of the steel used is produced in other countries. The combination of the current economy and the influx of foreign steel has been devastating on our local economy.

Although in recent years the economy of Pittsburgh has become diversified and not as dependent on the steel industry as the City once was, the impact of unemployment in the steel industry is certainly felt. If it were not for the major office building construction in the City's Golden Triangle, the local unemployment picture would be extremely grim.

Even though construction employment may be up, the fact remains that

the Pittsburgh area has many unemployed steelworkers. Their unemployment may be caused by many factors; however, one of the major factors is the importation of steel produced in foreign countries where the production may be subsidized and the product may be sold for a price below the cost of production.

As noted, to prove a foreign country is dumping steel under the current system is cumbersome and extremely time-consuming. Furthermore, the burden of proof if placed on the American Steel Industry. Your legislation will rectify this situation. Our steel industry will have direct access to the Federal courts and the burden of proof will be shifted to the foreign competition.

I concur with your legislative proposals and fully support Senate Bill 2167. I am sorry that I was not able to testify at the recent hearings on Senate Bill 2167. I will appreciate it if you will share my concerns with the other members of the Senate Judiciary Committee.

Very truly yours,

RICHARD S. CALIGUIRI

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